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DEPARTMENT OF JUSTICE OVERSIGHT HEARING

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

THE COMMITTEE'S OVERSIGHT IN CONNECTION WITH THE
DEPARTMENT OF JUSTICE AUTHORIZATION BILL

JULY 26, 1988

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DEPARTMENT OF JUSTICE OVERSIGHT HEARING

TUESDAY, JULY 26, 1988

U.S. Senate,
Committee on the Judiciary,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Edward M. Kennedy (acting chairman) presiding.

Also present: Senators Thurmond, Metzenbaum, Leahy, Hatch, Grassley, Specter, DeConcini, Humphrey, Simon, and Simpson.

OPENING STATEMENT OF SENATOR EDWARD M. KENNEDY

Senator Kennedy. We understand that our two witnesses are in the building. So to expedite our hearing this morning, we will proceed with opening statements.

We are going to have some votes, I believe, on the HHS appropriations bill. So we will move our hearing along.

The committee will hear this morning from two former Justice Department officials, former Deputy Attorney General Arnold Burns, and former Assistant Attorney General for the Criminal Division William Weld.

Mr. Burns was confirmed by the Senate to be Deputy Attorney General on July 23, 1986. At his confirmation hearing in July 1986, Mr. Burns told the committee that he was looking forward to helping the Attorney General as his right arm to provide leadership to the Department of Justice.

Eighteen months later Mr. Burns abruptly resigned.

Mr. Weld was confirmed by the Senate as Assistant Attorney General on September 12, 1986. At his confirmation hearing in August 1986, Mr. Weld noted that two of his priorities as Assistant Attorney General would be public corruption and white collar crime.

As U.S. Attorney for the District of Massachusetts in this administration, Mr. Weld was active in these two areas. His office secured convictions in about 95 percent of the public corruption cases it filed.

Both Mr. Burns and Mr. Weld submitted their resignation to the Justice Department on March 29, 1988. Mr. Weld's resignation was effective the same day. Mr. Burns left the Department on April 22, 1988.

Neither Mr. Burns nor Mr. Weld commented publicly about the reasons for their joint resignations.

On March 31, two days after their resignations were announced, the committee requested their testimony as part of the committee's oversight hearings in connection with the Department of Justice authorization bill.

Both witnesses requested that their appearance be deferred until after the report of Independent Counsel McKay concerning Attorney General Meese had been filed with the court.

The McKay report was filed on July 5, 1988.

These witnesses were invited to appear before the committee because of our concern about what led to the sudden resignations of these distinguished senior officials, and about what actions, if any, should be taken by this committee to assure that the Department of Justice is fulfilling its mandate to enforce the law and assure equal justice for all Americans.

Attorney General Meese's resignation and the nomination of Mr. Thornburgh to replace him means that nominations for the top four positions at the Justice Department now are pending in the Senate.

Before we begin confirmation hearings for these new officials later this week, we need to hear from these two former officials, Mr. Burns and Mr. Weld, about the problems in the Justice Department, and what needs to be done to remedy those problems.

We appreciate the cooperation of our two witnesses, and look forward to their testimony.

The Senator from Utah.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

We welcome the witnesses. Good to see you both again, and hope this will be an enjoyable hearing for you.

One of the primary functions of this committee is to responsibly conduct oversight with respect to the Department of Justice. So it is appropriate that we pause at the close of the tenure of this Attorney General, whom I respect, and examine the administration of justice, and the enforcement of our Nation's laws.

Now, with respect to Attorney General Meese, a long ordeal is over. Just 2 weeks ago, Independent Counsel McKay completed his investigation with the conclusion that 14 months of intensive scrutiny had not uncovered sufficient evidence to warrant indictment.

This particular personal tragedy for Mr. Meese and his family, as far as I'm concerned, is now history.

The President has appointed a new Attorney General, and we look forward to his tenure. The important point with respect to oversight over the Department of Justice is that throughout these past months of inquiry the Nation's law enforcement business has been conducted according to the highest standards of professionalism.

The proof of the Department's professionalism lies, I think, in the record. In practically every area of endeavor, the Department of Justice productivity has increased.

During Attorney General Meese's tenure, our border patrols have seized four to five times more illegal drugs.

Army and Navy ships and planes have spent at least twice as much time patrolling drug lanes.

The number of agents enforcing drug laws has been bolstered by 600.

The number of drug task forces has grown from 34 to 51.

Over $175 million of drug assets have been seized.

Over 245 criminal anti-trust cases have been filed. Now, that's a 63 percent increase over the Carter years.

The Bureau of Prisons has undergone the largest expansion in history; 47 of 50 States have adopted some of the suggestions of the Department's tort reform working group.

A record number of criminal civil rights cases, and a record number of employment discrimination cases were filed by this Justice Department.

The FBI has more than 50 percent more bank fraud cases underway in the battle against white collar crime. Investigatory efforts discovered and convicted numerous spy rings from the Pollards to John Walker.

Mafia bosses were investigated, and convicted, in New York, Chicago, Milwaukee, and Kansas City. Over $50 million in benefits was supplied to the victims of crime.

International terrorism and drug fighting accords have been reached, and much more has occurred to improve the administration of justice in the United States.

I've just hit, in this recitation, some of the high points. There are many other things that I think could be pointed to to show that there has been much done that has been worthwhile for this country and beneficial to our country.

But it is clear from the record and from the facts that the professionalism of the Department of Justice has been maintained, and in fact, improved during the Meese years.

Now, no doubt we will hear reports from some that the Department has labored recently under a cloud; that low morale has damaged the Department's mission. So I think it's well to get these opinions out in the open.

I do think that we should hear everything we can about this, and we should make every endeavor to hear this final chapter of this dime-store novel.

However, we should also endeavor to get a balanced picture that does justice to the hundreds of professionals—actually thousands—who daily carry out their duties down at the Justice Department.

In that connection I hope to enter into the record statements from major components with the Department indicating that productivity has increased in the past year. Productivity does not increase when morale is low.

I hope to enter into the record statistics establishing those productivity increases in the past year. I hope to remind us of what the headlines have illustrated in the past months, namely, that the Department has apprehended several terrorism suspects; has convicted a major drug kingpin from the Medellin Cartel; has extradited another kingpin out of Honduras; has launched a major defense procurement fraud case; has achieved numerous civil rights victories; has captured several narcotics fugitives; and has successfully resolved a massive prison uprising to name just a few of the celebrated instances of Departmental professionalism.

Now I hope that we don't just hear one side of these issues, and of this story today. We ought to have before the committee professionals from the Department who could attest to the high morale and outstanding record achieved in recent months, and I presume and hope that both of these witnesses will testify to that as well. I have respect for both of them. And this would provide a responsibly balanced picture of the efficiency of the Department if they would.

Now, in conclusion, I would simply like to commend the professionals at the Justice Department who labor to enforce our laws, and who labor to improve the administration of justice despite the current political climate—or should I say, the political climate of the last number of years.

And I hope that this hearing will be in part at least a tribute to them, if not to Mr. Meese who I think deserves some credit for all of these things happening, even though there are many who will not be willing to give him credit.

And also, again, I'd welcome our two witnesses. Both of you have served I think in distinguished fashions at the Department of Justice. I look forward to hearing your testimony and look forward to asking some questions about it.

Nice to have you here.

Senator **Kennedy**. Senator from Ohio.

OPENING STATEMENT OF SENATOR HOWARD M. METZENBAUM

Senator **Metzenbaum**. First, Mr. Chairman, I want to commend Mr. Burns and Mr. Weld for appearing before us today, as well as for their actions in resigning.

You had the courage to speak up for what you believe, and I think you've reflected well on the legal profession, on the Department, when you did resign.

But I must confess that I am absolutely shocked at what the Attorney General did yesterday. The Attorney General actually had the audacity to suggest that you two men were to blame for everything that went wrong in the Department.

It is just beyond anything that I could think of for him to arrange to speak out the day before your appearance here today.

To blame your assistants for your own failure hardly speaks well for the Attorney General.

It is so outlandish, it's hard to believe that he did it. But when you look at the entire record of this Attorney General, it's not hard to believe anything about him would be too outlandish.

We have the strange situation of an Attorney General, found by the independent counsel to have violated the criminal law on four occasions, who proudly talks about the fact that he's been vindicated, and that his actions were entirely proper.

There was not even an admission on his part of ethical impropriety.

Frankly, I'm pleased the Attorney General is leaving office. As a matter of fact, I never thought he should have become the Attorney General.

And it's hard to believe and hard to understand how the Justice Department could have sunk to as low a level as it did since this Attorney General has been in control.

I think it's fair to say that the reputation of the Department is the worst since Watergate. And I think the action of the two of you, in indicating your disagreement with the conduct of the Attorney General in leaving that office provides some measure of restoration of faith in our system.

Soon we will be considering nominees for vacant positions at the Department of Justice. And I think that we bear some responsibility to in some way see if we can't make sure that history not repeat itself.

I look forward to hearing your testimony today, and thank you for being with us.

Senator **KENNEDY**. Senator from Iowa.

OPENING STATEMENT OF SENATOR CHARLES E. GRASSLEY

Senator **GRASSLEY**. Thank you, Mr. Chairman.

Perhaps as much as any member of this committee, I've had my policy differences with the Attorney General, and even with some of his deputies.

And sometimes, these differences have been quite public. But they were, and they are, based on policy, and not on personality.

The Independent Counsel and his battalion of lawyers and investigators spent 14 months and some $2 million inspecting the Attorney General from every possible angle—and even inside out.

To their disappointment, no doubt, what they found was little, at least too little for them. In an exercise of self-justification and make-work, they issued this 814 page report that we all know about. This occasioned a 104 page response, with attachments, from the Attorney General.

Unable to make the case against the Attorney General based on facts, today, we will hear about perceptions.

Today's hearings isn't oversight; it's overkill.

The Attorney General isn't here this morning. And I don't know if he was asked to appear, or if his schedule would permit him to. He's still running the Justice Department, and he's going to do that until he leaves.

So that at least a few pages of today's voluminous record will contain some semblance of balance, Mr. Chairman, I ask that a copy of the Attorney General's 13-page statement of yesterday be made a part of the record.

And that's the end of my statement.

Senator **KENNEDY**. It will be included in the record at an appropriate place.

The Senator from Arizona.

Senator **DECONCINI**. Mr. Chairman, the Senator from Vermont was here before I was, and I'm going to yield to him.

Senator **KENNEDY**. The Senator from Vermont.

OPENING STATEMENT OF SENATOR PATRICK J. LEAHY

Senator **LEAHY**. Well, I thank the Senator from Arizona.

And Mr. Chairman, I think it is good we are having this hearing. After we hear from these two former Justice Department officials, I think we'll be able to close what's been an unfortunate chapter in the history of the Justice Department.

We can go off to fill positions that have been vacated—vacated I think because of the Attorney General's indifference to the problems we're going to hear about this morning.

I strongly recommended that the administration consider filling these positions based on competency, not on ideology. The problem is, that they have let ideology outweigh the questions of competency in the past.

Now, we're going to hear—we'll hear just what happened at the Department. And I have read some of the testimony, and I think it is going to come as quite an eye-opener to a lot of people.

But you know, as one who spent about 8½ years in law enforcement, I know that law and order starts at the top. You can have slogans and tough talk about stopping crime. That becomes meaningless if the top person, the Attorney General, is the subject of allegation after allegation.

And I hope this hearing will help future administrations confront the problems caused by misplaced loyalties.

The next Attorney General, whoever he or she might be, indeed, the next President, must understand how loyalty to an old friend may be disloyalty to the American people, the people we're pledged to serve.

Now, Mr. Chairman, when the Deputy Attorney General and an assistant Attorney General resigned on the same day, the signal was unmistakable. The fact that they were willing to leave jobs that most lawyers in this country only dream of, to give it all up, symbolized the damages being inflicted on the Department.

Now, there were charges that those who asked Mr. Meese to step aside were being unfair. People said his problems were the result of unfair treatment by the press.

But the press didn't provoke Mr. Weld, who is a Reagan appointee, to resign. The press did not provoke Mr. Burns, another Republican appointee, to resign.

And I have had my differences with them, as they with me. But there is one thing that we agreed on: that the Justice Department was in trouble; it needed fresh, conscientious leadership at the top.

So we are going to hold confirmation hearings in the next couple of weeks to fill the four top jobs in the Justice Department. And I think we're going to join together, Republicans and Democrats, to put the Department back on course as soon as possible.

And if, as it appears now, the President has chosen individuals because of their competence rather than because of ideology or blind loyalty, there is no reason why we couldn't have them confirmed this summer.

Now, that's really what all of us look for in this case, is how competent the leadership is going to be. And had that been the criterion in the past, we would not have the problems we have now.

I think in summary, Mr. Chairman, it's a case where—it's a case where the President, and those around him, seem to feel that their loyalties were to one person, not to the Department of Justice.

The Department of Justice is not a creature of either political party, nor of any one president. The Department of Justice is there for all of us.

That was forgotten. If it's remembered in the future, we won't have this problem again.

Thank you, Mr. Chairman.

Senator KENNEDY. The senator from Pennsylvania.

OPENING STATEMENT OF SENATOR ARLEN SPECTER

Senator SPECTER. Thank you, Mr. Chairman.

I believe that oversight hearings by this committee into the activities of the Justice Department are very important, and are not undertaken as often or as thoroughly as they should be.

So from the point of view of our oversight, I think we have a very important function to perform today.

I am concerned about what has happened in the Department of Justice with respect to the investigation of the Department of Defense procurement. I have written to Attorney General Meese on that subject.

For a considerable period of time, there was no assistant Attorney General in charge of the criminal division, nor was there an acting assistant Attorney General in charge of the criminal division. I think the issues on that important investigation require oversight by the Judiciary Committee to see if the Department of Justice was properly fulfilling its responsibilities.

I believe that this committee ought to inquire in great detail as to what has happened in the Department of Justice on the activities on illegal drugs in this country. For fiscal year 1986, the appropriations committee established a special task force for the city of Philadelphia, and appropriated extra funds for extra agents for the Department of Justice, from the Drug Enforcement Administration, and from the firearms unit and Treasury.

That action was not pursued by the Department of Justice, a question which this Senator has inquired into in some detail in the past without any successful answers.

Those two subjects are only illustrative of what I think this committee ought to be doing by way of oversight of the Department of Justice, at all times, not just when there is an emergency created by the resignation of the Deputy Attorney General and the assistant in charge of the criminal division.

I do think it is important when the Assistant Attorney General in charge of the criminal division comes to the flat conclusion, as Mr. Weld has, as set forth on page 16 of his testimony, that, as he says, he concluded that if Mr. Meese were an ordinary official he would be prosecuted under the gratuity law.

It may be that that subject is not moot. I'm not sure about that. After the very lengthy report by independent counsel, I am in some doubt as to what the conclusions are, having spent a lot of my professional life in prosecution. To have independent counsel assert that there are probably violations of the criminal law, but then conclude that no prosecutions are warranted for a variety of reasons, leaves the whole case in a very curious circumstance.

You have a citizen, Mr. Meese, in effect categorized as a law violator, and then you have no trial for a determination of his innocence or guilt, leaves the matter really in a hiatus state. However, that's going to have to be determined in another forum.

I am very much interested in what former Deputy Attorney General Arnold Burns has said, that he was precluded from discussing matters with Attorney General Meese because of ethical considerations, the Ethics in Government Act; seems a curious circumstance, and perhaps Mr. Burns is correct that he could not discuss that with Mr. Meese.

But in a context where these matters were hanging over the Justice Department, where the Attorney General's conduct was in issue, and where the Deputy Attorney General thought these were matters that ought to be reviewed that there would be a legal constraint against that kind of a conversation.

If that in fact is true, it seems to me we ought to act legislatively to correct that so that the number two man in the Justice Department can talk it over with the number one man in the Justice Department to try to resolve the issues.

I do hope in the course of our hearings today that we will avoid the political season. I do think that there are really very, very important subjects of oversight that this committee ought to inquire into today, and that is where I intend to direct my questions.

Thank you, Mr. Chairman.

Senator KENNEDY. The Senator from Arizona.

OPENING STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DECONCINI. Thank you, Mr. Chairman. Good morning, Mr. Burns, Mr. Weld. I thank you for being here today. I appreciate immensely the professionalism you demonstrate, and your actions, which certainly put your professional responsibilities and our country, I think, particularly the Department of Justice, above politics.

And I must say that I am not sure that I can always meet that responsibility, or any of us here can meet that responsibility. And I admire you for taking that very strong step. It had to be one that was a wrenching one, and I think there is great admiration, not from the political side, because that will always be with us, but from the professional side, as Senator Metzenbaum pointed out.

As a lawyer, I think it demonstrates the highest standards, and I compliment you for that.

Today is not a trial of Mr. Meese as such, and I don't intend to pass judgment on his guilt or innocence. I do, however, plan to question some of the statements that have been made by you gentlemen.

I would like to know what motivated you to come to the conclusions that you did, and what kind of shape the Department of Justice is in, at least as you believe it to be today, and perhaps, what can be done to correct some of the problems if they exist.

I have familiarized myself with both of your résumés, and indeed, they are impressive. Mr. Burns, I've worked with you regarding hearings and with you in New York and other places in the drug effort, and you demonstrated a tremendous amount of knowledge, tenacity and strength.

And you have come from a very successful law practice. I'm inclined to believe that you would not take resigning from the Justice Department lightly.

And Mr. Weld, you have distinguished yourself in your chosen career. You've established yourself as a premier prosecutor while a U.S. attorney in Boston. You've served the public well, and I'm sure your judgment in this matter was based on what you thought was best for the Department of Justice, and your own ethical standards.

Mr. Meese was first nominated in February of 1984. Ever since his nomination Mr. Meese has faced the question of whether it would be in the best interest of the American people, the Department of Justice, and the administration, for him to withdraw his name from nomination, or to resign from office.

For much too long, Mr. Meese refused to face the fact that his remaining in the office of Attorney General was hurting the Nation, not to mention the President.

The public confidence in the Nation's highest prosecutorial agency has melted away in this Senator's judgment. Morale at the Department seems to be declining from what information I have coming from the Department.

The turmoil at the Department reached an all time high with the resignation of the two most senior officials of the Justice Department, you two gentlemen.

Nevertheless, Mr. Meese stubbornly held on to his office. The recent independent counsel's report stating that Mr. Meese engaged in questionable activities should not have been the controlling factor influencing Mr. Meese's decision to resign.

The welfare of the Department of Justice, and more importantly, the American people, should long ago have convinced Mr. Meese that the best decision would have been for him to vacate the office.

There is also the question of loyalty to the appointing authority, President Reagan. I know that the President and the Attorney General are good friends, and I respect that friendship. But it seems to me that it certainly is in question when you cannot move away from something that is damaging the President himself.

My views have not changed with the release of the so-called McKay report. As I said in a letter to Attorney General Meese dated March 30, 1988, just one day after the resignation of Mr. Burns and Mr. Weld, I believe that Mr. Meese, like every American citizen, deserves due process. I'm not making any judgment on Mr. Meese's guilt or innocence, of any of the specific charges made against him.

But I also believe the American people deserve the best government that we can give them. I reluctantly concluded that Mr. Meese is no longer able to provide the kind of public service that the American public has a right to expect.

Although Mr. Meese now claims exoneration, and graciously decided to relinquish the reins of the Department, his actions are far from timely.

With little more than 6 months of the present administration remaining, his actions are reminiscent of a home run hit in the bottom of the 9th inning with the home team trailing 10 to 0. Too little, and far too late.

Now we read in today's paper that Mr. Meese believes that the difficulties are due to the incompetence of the two witnesses who are testifying here today. As he contends in his speech before the National Press Club, the evidence now shows—this is Mr. Meese's quote—the evidence now shows that if a competent and thorough preliminary investigation had been directed by the then-Deputy Attorney General and the former head of the criminal division, there would likely have been no cause for referral to the independent counsel.

I'm hopeful that you gentlemen will respond to Mr. Meese's remarks. I'm reminded of the line penned by William Shakespeare: "Perhaps he doth protest too much."

I look forward to the testimony. And again, thank you for taking the leadership that you have taken, both of you, professionally, and in behalf of this Nation.

Thank you, Mr. Chairman.

Senator KENNEDY. The Senator from New Hampshire.

OPENING STATEMENT OF SENATOR GORDON J. HUMPHREY

Senator HUMPHREY. I would like to say a few things at this juncture. First, of course, we all know the Attorney General will be leaving office shortly. And therefore, this hearing can have no bearing on his further tenure.

We all know that the independent counsel has completed his investigation. It was a very thorough investigation, very expensive investigation. No resources were spared.

And he has made public his report. One wonders why this hearing is being held. It can have no bearing on the tenure of the Attorney General. It can have no bearing on the report.

It certainly gives—the scheduling of this hearing gives the appearance of politics, playing of politics, by this committee.

That is a very serious matter, particularly in this committee, of all committees. We have a great deal of other important business pending, which will be further delayed, perhaps fatally delayed, by this hearing.

We have, for example, the balanced budget amendment to the Constitution, Mr. Chairman, on which hearings were held months ago, and which has been reported out, Mr. Chairman, to the full committee.

That is a subject and issue, a matter, of grave and continuing importance to the American people. And yet this committee gives the appearance of bottling up that bill and playing politics, when it should be attending to more important responsibilities.

There is the Child Protection and Anti-Obscenity Act, on which hearings were held nearly 2 months ago, Mr. Chairman, on about which my office, at least, has received quite a lot of mail.

I'd like to know, I'd like to ask the Chairman, if he would respond to a question, when this committee is going to report out the balanced budget amendment to the Constitution and the Child Protection and Anti-Obscenity Act.

Senator **Kennedy**. Those items, as I understand, are on the agenda, and we expect to have executive sessions prior to the August recess.

I would be delighted to respond and include a more complete response, if the Senator so desires. But those are the facts.

Senator **Humphrey**. For what date are those items on the agenda, might I ask?

Senator **Kennedy**. The agenda, as I am informed, has not been completed for the next executive meeting.

Senator **Humphrey**. Then it is not on the agenda?

Senator **Kennedy**. It has not been completed for the next meeting.

Senator **Humphrey**. The Senator was mistaken in this statement.

Senator **Kennedy**. I stand to be corrected.

Senator **Humphrey**. Well, I think we ought to get down to some of the real business of this committee and stop playing politics, Mr. Chairman.

Senator **Kennedy**. The Senator from Illinois?

OPENING STATEMENT OF SENATOR PAUL SIMON

Senator **Simon**. Yes, Mr. Chairman.

First, I want to commend the two witnesses for their courage. And I'd like to respond to my friend from New Hampshire.

I don't think we're in the business of playing politics here. And I think the message from this committee is, I hope from this hearing, to two people, to Michael Dukakis and to George Bush.

And that message is, don't play politics with the Department of Justice.

I voted against the confirmation of Ed Meese. Nothing against him personally. I would have voted for him for Secretary of Transportation. I would have voted for him for Ambassador to Luxemborg.

I can think of other positions.

But when you're talking about the Attorney General of the United States, you're talking about a person who should symbolize justice for this country. And where people should say, this person is not making decisions on a political basis.

And I say to my colleague from New Hampshire, I think we have a good example of what should be done in a Republican administration when Gerald Ford appointed Ed Levy as the Attorney General of the United States.

Former President of the University of Chicago; former Dean of the University of Chicago Law School. I don't know of a person in Washington who believed that Ed Levy would make a fundamental decision on a political basis.

That's what we ought to be looking for in an Attorney General of the United States. And my hope is that what happens in this hearing is going to be a message not just to the two nominees today, but to nominees and Presidents in the future.

We want the Department of Justice, more than any other department, to be immune from political pressures. We want it to be the symbol of justice for this country.

Thank you, Mr. Chairman.

Senator **Kennedy**. Thank you very much, Senator.

Just to clarify some of the points that have been raised, Attorney General Meese was invited to appear this Friday, and turned us down; he rejected the invitation of this committee.

As for the reasons for holding these hearings now on March 29, both of these distinguished public officials resigned from two of the highest positions in the Department of Justice.

At their request, Senator, our committee deferred any hearing on oversight of the Justice Department until we had the McKay report.

We received the report when it was published on July 18. And this was the first available time to hold these hearings.

The purpose of the hearings is to learn about the problems within the Department of Justice, and how such problems can be avoided in the future. And we hope to be able to make progress on that, so that the Department of Justice really is a Department of Justice.

At the request of the witnesses now, we will ask them if they will be sworn in. Mr. Burns and Mr. Weld have both requested to be sworn in, and I'd ask that they raise their hands.

Do you swear that the testimony you will give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Burns**. I do.

Mr. **Weld**. I do.

Senator **Kennedy**. Okay, we will start off with you, Mr. Burns. And perhaps if you would outline the reasons why you felt you had to resign from the Justice Department?

TESTIMONY OF ARNOLD I. BURNS, FORMER DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. **Burns**. Thank you, Mr. Chairman, distinguished members of this distinguished committee.

It's a pleasure to be here today. I have a brief statement, and then I will of course respond to any questions that you may have for me.

Mr. Chairman, on January 6, 1986, I was sworn in as Associate Attorney General of the United States. Following my nomination by the President and my confirmation by the U.S. Senate.

I was promoted. On July 24, 1986, I took the oath as Deputy Attorney General of the United States, again, after nomination by the President and confirmation by the Senate of the United States.

I resigned from the Department of Justice on March 29, 1988, and formally left my post on April 22, 1988.

I came to Washington, D.C., to the Department of Justice, from the active practice of law. I have now practiced law for 35 years. I was fortunate, I was lucky, to have founded and headed a firm which today numbers over 100 lawyers.

When the opportunity came, and came unexpectedly, for me to serve my country, I did not hesitate for a moment. Many of my friends and colleagues told me I was crazy, nuts, to sever my relationship with a lucrative law practice to come serve my government. I disagreed. They were wrong; I was right.

The opportunity to serve this great Nation, to serve President Reagan and his administration, and to make a contribution, however small, to the improvement of the administration of justice, was unique.

I thought I had won the Irish Sweepstakes when I was selected for the job.

As I look back, and as you can imagine, I have now had ample time for reflection, I can say without reservation that my tenure at the Department of Justice was the highlight of my professional life.

I think being Deputy Attorney General of the United States, as Senator Leahy suggested, has got to be one of the greatest jobs in the world for any lawyer. The opportunity to act as chief operating officer, and to run on a day-to-day basis the Justice Department, the largest law firm in the history of the world, and to have hands-on responsibility for management of roughly 65,000 people, and to deal with issues that cover the whole spectrum of law, of policy, of management, was an opportunity of a lifetime.

And to do so with a cadre of professional men and women who work in the Department of Justice, people who are responsible for the great record that Senator Hatch referred to in his statement, the opportunity to work with these people, some of the finest, and most dedicated, and most competent lawyers, and people, I have ever met, was a great privilege.

I loved the job. I loved working with the people. I loved working the problems. I loved working the issues. You can now imagine that my decision to leave the Department of Justice was made with a heavy heart.

Mr. Chairman, the day I left was one of the saddest days of my life.

Up until now, I have kept my own counsel about my reasons for leaving the Department of Justice. I have refused newspaper, magazine, radio and television interviews. I advised all who asked, including this committee, that I would maintain radio silence until such time as Mr. McKay released his report.

My reason? I did not want to run the risk of prejudicing Mr. Meese in any way, shape, manner or form, insofar as Mr. McKay's investigation was concerned.

My decision to leave the Department of Justice was not based on any hard feelings or personal animus toward the Attorney General, or anybody else. To this day, I still do not harbor any of these feelings.

I am not angry. I have no ax to grind. And I continue to be only sad.

In my job I had contact with all facets and all components of the Department of Justice. I met regularly with the leadership of the Department of Justice, and with career attorneys and personnel across the board.

I was in a unique position to measure morale and performance in the Department. In addition, I was responsible for most personnel decisions in the Department, including making determinations about whether to discharge employees or to place them on administrative leave when allegations of serious misconduct were under investigation.

I also served as Acting Attorney General when Mr. Meese was travelling outside of Washington, D.C., which was about a third of the time. I served as acting Attorney General on all matters in which Mr. Meese had recused himself as a matter of law. And I was acting Attorney General on all matters in investigations which affected Mr. Meese personally.

In March, 1987, during a weekend that I was spending with Mr. Meese at a Justice Department conference, I received a telephone call from William F. Weld, the assistant Attorney General in charge of the criminal division.

Bill shared with me information he had received from the U.S. Attorney in the Southern District of New York, Mr. Guiliani. He told me there were serious allegations against the Attorney General growing out of the investigation in the Southern District of New York of the Wedtech Corporation, and involving the Attorney General's relationship with one, E. Robert Wallach, and others.

As the foreward to the 814-page report of the independent counsel, dated July 15, 1988, to which reference has already been made, states, on May 11, 1987, as acting Attorney General, I asked Mr. McKay to undertake an investigation of Mr. Meese.

I can tell you that it was not a happy moment for me. It was not a pleasant decision. I did not like it one bit.

I had before me the recommendations of the public integrity section, and the assistant attorney general in charge of the criminal division, who advised me that there was evidence that Mr. Meese may have violated the criminal laws of the United States, and that further investigation was required.

As the investigation got underway and continued, I learned of a number of problems arising out of Mr. Meese's investments with one, Franklin Chinn, W. Franklin Chinn.

Months later I learned from department officials of allegations concerning the Attorney General's involvement in the Iraqi pipeline matter.

Soon thereafter, I received yet another memorandum from the public integrity section, this one regarding the Attorney General's involvement in the Baby Bell matter. Again, the professional prosecutors, with unanimity, and with the approval of the assistant Attorney General of the criminal division, advised that there was evidence that a crime in violation of the conflict of interest laws may have been committed, and that further investigation was required.

Thereafter, I learned of yet another matter involving the Bender family. I am not detailing any of these matters, because they're all covered in the report of the independent counsel, and no purpose is served by my repeating them here.

I'm going to avail myself of the invitation that Senator DeConcini made, to comment on Mr. Meese's speech yesterday, before the National Press Club.

See, this should be rendered as ancient history. Mr. Meese doesn't want it to be ancient history. He said: The evidence now shows that if a competent and thorough preliminary investigation had been directed by the then-Deputy Attorney General, and the former head of the criminal division, there would likely have been no cause even for referral to an independent counsel, close the quote.

At first blush, this appears to be an attack on me, and on Mr. Weld. On analysis, and once one has an understanding of the underlying facts, it is an unwarranted attack on the career professionals and the great lawyers in the Department of Justice who conducted the preliminary investigation, and who unanimously concluded that under the governing law, further investigation was necessary.

Now, Mr. Meese knows very well what the law says. I'm going to read a footnote from Chief Justice Rehnquist's opinion in *Morrison* v. *Olson*, where he describes what the law provides; very brief.

And he says, on page 3:

> The act also requires the Attorney General to apply for the appointment of an independent counsel if 90 days elapse from the receipt of the information triggering the preliminary investigation without a determination by the Attorney General that there are no reasonable grounds to believe that further investigation or prosecution is warranted.

Did you follow me? There must be a finding by the Attorney General, while he's sitting in that chair, that there are no reasonable grounds to believe that further investigation is warranted.

We had very carefully constructed a working partnership among our professional lawyers in our criminal division, under the leadership of Mr. Weld and Jack Keeney, one of Mr. Weld's deputies, and one of the finest lawyers I've ever been privileged to meet or know or work with anywhere, Rudolph Guiliani, the U.S. Attorney in the Southern District of New York, as you know, one of our ablest prosecutors, and Mr. McKay, to ensure that there was no slippage between the cracks in the boardwalk.

Mr. Meese knows that under the workings of this independent counsel statute, that the Department of Justice in its preliminary investigation does not have the power to convene a grand jury.

Mr. Meese misremembers, for before I could make my application to the special division of the Three Judge Court, I received a letter, dated May 11, 1987, from Miller, Cassidy, Laroca and Lewin, Mr. Meese's lawyers.

I shall read just one paragraph. I include the entire letter to ensure that it is not taken out of context and so forth; I don't think it is.

He says, in a letter to me:

> Mr. Meese hopes that these questions can be resolved as promptly as possible by an inquiry that will be fair and complete, and will be perceived as being fair and complete.
>
> The most expeditious means of authoritatively resolving the questions that have been raised, while enabling the Attorney General and the Department of Justice, to continue with their constitutional and statutory obligations, during the pendency of the investigation, would be to refer the matter to an independent counsel at an early stage. Accordingly, Mr. Meese hereby requests such a referral.

Mr. Meese forgot that. He asked for the independent counsel.

As far as allegations involving his conduct, in respect of the Wedtech Corporation, as I read the McKay report, that investigation is still not closed. Mr. McKay, as I read it, said that he could not conclude the investigation because certain evidence was unavailable to him, including the testimony of key people whose testimony may be available after the conclusion of their prosecution in the Southern District of New York by Mr. Guiliani.

I am delighted that Mr. Meese's speech is included in the record, the speech of yesterday. Because according to Mr. Meese, everybody is wrong.

The Congress is wrong in constructing this statute.

Burns and Weld and the public integrity section, with whom we worked and on whom we relied, are wrong in following the mandate of the Congress.

The speech yesterday contains a scathing, excoriating attack on Mr. McKay; he's wrong. Everyone is out of step but Jim.

Mr. Meese continues to defend one E. Bob Wallach.

So you get the flavor of what life was like in the Department of Justice, this gives you some idea. It was a world of Alice in Wonderland, a world of illusion and allusion, a world in which up was down and down was up, in was out and out was in, happy was sad and sad was happy, rain was sunshine, sunshine was rain, hot was cold and cold was hot.

In the various situations that I adverted to, there was one common denominator throughout all of these separate situations. That common denominator was E. Bob Wallach.

On April 8, 1987, well over a year ago, I advised Mr. Meese that in my judgment, without getting into any detail, because I felt foreclosed, that E. Bob Wallach was in a lot of trouble; Bill Weld had spoken with Mr. Meese. And in his way he told Mr. Meese that Bob Wallach was in deep yogurt.

Senator LEAHY. I come from an agricultural State. Was that yogurt?

Mr. BURNS. Y-o-g-u-r-t. And I advised Mr. Meese to distance himself from Mr. Wallach, and told him to sever his relationship with Mr. Wallach, told him to repudiate Mr. Wallach.

My advice was not heeded.

There's more to that story, but I won't take the time to go into it now.

In time, it became apparent to me that there was a public perception that Mr. Wallach was benefiting to the tune of over a million dollars from his relationship with the Attorney General, and that he was actually out marketing that relationship.

There was undoubtedly a public appearance of impropriety. And this is what Mr. Meese expected Mr. Weld and I, as suggested yesterday, to sweep under the carpet, to make the decision to defeat the entire workings of this law, the Ethics in Government Act.

And I venture to say that had we done so, quite correctly, we're both big fellows, there wouldn't be enough tar or feathers in the City of Washington, D.C., to send us home.

Mr. Meese continued to support Mr. Wallach and to defend Mr. Wallach in the press. In testimony before the Congress and in public, this continued after Mr. Wallach was indicted by Mr. Meese's Department of Justice.

And I want to make it clear that I value friendships greatly. There is probably nothing more important than trust and loyalty in a friendship.

But these traits have got to work both ways. It was clear to me that Mr. Wallach was abusing any friendship that he had with Mr. Meese.

As time went on, it became apparent to me that morale at the Department of Justice was deteriorating rapidly. I heard complaints everywhere. I heard stories of employees being embarrassed and ridiculed.

One employee had to leave a party of friends when the personal abuse became intolerable.

Graffiti containing obscenities about Mr. Meese appeared in the very halls of the Department of Justice.

One Justice Department employee was upbraided by a desk clerk at a hotel on checking in because he was associated with the Meese Justice Department.

Last week we all saw that an assistant U.S. attorney and a Federal prosecution in a Federal courthouse, on two occasions, called Mr. Meese "a sleaze".

What do you think that does to morale? From my vantage point, I could see that performance by the Department of Justice was being impeded; that great record that we had compiled, and of which I was so proud to be a part, a small part, was being impeded by a deep malaise that was setting in by virtue of Mr. Meese's problems, and by virtue of the public outcry for his resignation.

Moreover, Mr. Meese was recused in a number of matters, and recusals multiply, by virtue of his being defended by a law firm which had many matters in the Department of Justice.

This, coupled with the devotion of enormous amounts of Department time and resources to Mr. Meese's defense, adversely affected morale and performance.

Finally, in my job I was faced with a number of cases where I, with Mr. Meese's approval, was called upon to place Department employees on administrative leave while serious allegations of misconduct against them were under investigation. Employees involved ranged from senior officials to line personnel.

I was confronted with the argument that it as wrong for us to place an employee on administrative leave where allegations were not as serious as though facing Attorney General Meese, and that the same standard should apply, that the Attorney General should be measured by the same standard as any other Department employee, and that if there should be a difference in the standard, a more stringent standard should be applied to the first law enforcement official of our Nation.

During November of 1987, I began to realize that with the investigation of Mr. Meese still unresolved, and with its scope seemingly continuing to grow, the morale and performance in the Department would continue to deteriorate, and public confidence in the Department of Justice would continue to erode.

Apparently, Mr. Meese, too, was concerned about the damage. In his response to the report of the Independent Counsel, pages 2 and 3, he said, "In a letter of December 1, 1987, we"—Mr. Meese—"requested that Mr. McKay announce the conclusion of his investigation of the Attorney General." Because "It was in the national interest that public speculation over the prospects of the person occupying this office be laid to rest promptly."

We urged him, Mr. Meese, urged him to consider that the Attorney Generalship and the Department of Justice would be improvidently harmed if public speculation is permitted to endure any longer than is absolutely necessary.

I was unaware of this letter. I saw it for the first time in Mr. Meese's filing.

In November, I concluded that January 5, 1988, the second anniversary of my tenure at the Department would be an appropriate time for me to leave. Out of loyalty to the President, to the institution of the Department of Justice, and because I am, by nature, not a quitter, I hung in and I decided to continue.

I was figuratively on my prayer bones, hoping that the investigation of Mr. Meese would be resolved; that either he would have the good sense to step aside, to step aside pending the resolution of the investigation, or that he would be exonerated.

My situation was exacerbated by the fact—Senator Specter referred to this—that under the Ethics and Government Act, I was precluded from discussing these matters, the underlying facts with Mr. Meese, the object, the subject of this investigation. It would have been a violation of law for me, as Acting Attorney General, in the matter of his investigation to discuss facts and circumstances with him, and to the Independent Counsel.

I found myself literally between a rock and a hard place. I had, by that time, concluded that until the matters under investigation were resolved one way or the other, Mr. Meese could not properly continue to act as Attorney General.

After discussions with Mr. Weld and others in the Department of Justice; after discussions with A. B. Culvahouse, counsel to the President, Senator Howard Baker, the President's Chief of Staff, I decided that I had to leave.

It became clear as a bell to me that I could no longer bear silent witness to the deterioration of morale, the paralysis in performance that was beginning to set into the Department, and the continuing erosion of public confidence in the Department. I could not permit my silence and my inaction to be construed as condonation, to be construed that I was condoning what was going on.

I concluded, gentlemen, that I had to do something. With my tongue tied by the confidentiality demanded of me by law, there was only one way that I could make a statement that something was wrong. I chose it. I resigned.

Thank you very much.

[The prepared statement of Mr. Burns follows:]

STATEMENT

OF

THE HONORABLE ARNOLD I. BURNS

BEFORE

THE JUDICIARY COMMITTEE

OF

THE UNITED STATES SENATE

JULY 26, 1988

THANK YOU, MR. CHAIRMAN. IT IS A PLEASURE TO BE HERE TODAY. I HAVE A BRIEF OPENING STATEMENT. AFTER THAT, I WILL BE HAPPY TO ANSWER QUESTIONS.

MR. CHAIRMAN, ON JANUARY 6, 1986, I WAS SWORN IN AS ASSOCIATE ATTORNEY GENERAL OF THE UNITED STATES FOLLOWING MY NOMINATION BY THE PRESIDENT AND CONFIRMATION BY THE SENATE. ON JULY 24, 1986, I TOOK THE OATH AS DEPUTY ATTORNEY GENERAL OF THE UNITED STATES, AGAIN AFTER NOMINATION BY THE PRESIDENT AND CONFIRMATION BY THE SENATE. I RESIGNED FROM THE DEPARTMENT OF JUSTICE ON MARCH 29, 1988 AND FORMALLY LEFT MY POST ON APRIL 22, 1988.

I CAME TO WASHINGTON, D.C. TO THE DEPARTMENT OF JUSTICE FROM THE ACTIVE PRACTICE OF LAW. I HAVE NOW PRACTICED LAW FOR 35 YEARS. I WAS FORTUNATE TO HAVE FOUNDED AND HEADED A FIRM WHICH TODAY NUMBERS OVER 100 LAWYERS. WHEN THE OPPORTUNITY

CAME - AND CAME UNEXPECTEDLY - FOR ME TO SERVE MY COUNTRY, I DID NOT HESITATE FOR A MOMENT. MANY OF MY FRIENDS AND COLLEAGUES TOLD ME I WAS CRAZY TO SEVER MY RELATIONSHIP WITH A LUCRATIVE LAW PRACTICE TO COME SERVE MY GOVERNMENT. I DISAGREED. THEY WERE WRONG. I WAS RIGHT. THE OPPORTUNITY TO SERVE THIS GREAT NATION, PRESIDENT REAGAN AND HIS ADMINISTRATION, AND TO MAKE A CONTRIBUTION, HOWEVER SMALL, TO THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, WAS UNIQUE. I THOUGHT I HAD WON THE IRISH SWEEPSTAKES.

AS I LOOK BACK (AND I HAVE HAD TIME TO REFLECT), I CAN SAY, WITHOUT RESERVATION, THAT MY TENURE AT THE DEPARTMENT OF JUSTICE WAS THE HIGHLIGHT OF MY PROFESSIONAL LIFE. I THINK BEING DEPUTY ATTORNEY GENERAL OF THE UNITED STATES HAS TO BE ONE OF THE GREATEST JOBS IN THE WORLD FOR ANY LAWYER. THE OPPORTUNITY TO ACT AS CHIEF OPERATING OFFICER AND TO

RUN ON A DAY-TO-DAY BASIS THE JUSTICE DEPARTMENT, THE LARGEST LAW FIRM IN THE HISTORY OF THE WORLD, AND TO HAVE HANDS-ON RESPONSIBILITY FOR THE MANAGEMENT OF ROUGHLY 65,000 PEOPLE AND TO DEAL WITH ISSUES THAT COVER THE WHOLE SPECTRUM OF LAW, POLICY AND MANAGEMENT WAS AN OPPORTUNITY OF A LIFETIME. TO DO SO WITH A CADRE OF PROFESSIONAL MEN AND WOMEN WHO WORK IN THE DEPARTMENT OF JUSTICE AND WHO ARE WITHOUT QUESTION SOME OF THE FINEST AND MOST DEDICATED AND MOST COMPETENT LAWYERS AND PEOPLE I HAVE EVER MET WAS A PRIVILEGE. I LOVED THE JOB. I LOVED WORKING WITH THE PEOPLE. I LOVED WORKING THE PROBLEMS. I LOVED WORKING THE ISSUES. YOU CAN NOW IMAGINE THAT MY DECISION TO LEAVE THE DEPARTMENT OF JUSTICE WAS MADE WITH A HEAVY HEART. MR. CHAIRMAN, THE DAY I LEFT WAS ONE OF THE SADDEST DAYS OF MY LIFE.

UP UNTIL NOW, I HAVE KEPT MY OWN COUNSEL ABOUT

MY REASONS FOR LEAVING THE DEPARTMENT OF JUSTICE. I HAVE REFUSED NEWSPAPER, MAGAZINE, RADIO AND TELEVISION INTERVIEWS. I ADVISED ALL WHO ASKED, INCLUDING THIS COMMITTEE, THAT I WOULD MAINTAIN RADIO SILENCE UNTIL SUCH TIME AS MR. MCKAY RELEASED HIS REPORT. MY REASON: I DID NOT WANT TO RUN THE RISK OF PREJUDICING MR. MEESE IN ANY WAY, SHAPE, MANNER OR FORM INSOFAR AS MR. MCKAY'S INVESTIGATION WAS CONCERNED.

MY DECISION TO LEAVE THE DEPARTMENT OF JUSTICE WAS NOT BASED ON ANY HARD FEELINGS OR PERSONAL ANIMUS TOWARD THE ATTORNEY GENERAL OR ANYBODY ELSE. TO THIS DAY I STILL DO NOT HARBOR ANY OF THESE FEELINGS. I AM NOT ANGRY; I HAVE NO AXE TO GRIND. I CONTINUE TO BE ONLY SAD.

IN MY JOB I HAD CONTACT WITH ALL FACETS AND COMPONENTS OF THE DEPARTMENT OF JUSTICE. I MET REGULARLY WITH THE LEADERSHIP OF THE DEPARTMENT OF JUSTICE AND WITH CAREER ATTORNEYS AND

PERSONNEL ACROSS THE BOARD. I WAS IN A UNIQUE POSITION TO MEASURE MORALE AND PERFORMANCE IN THE DEPARTMENT. IN ADDITION, I WAS RESPONSIBLE FOR MOST PERSONNEL DECISIONS IN THE DEPARTMENT, INCLUDING MAKING DETERMINATIONS ABOUT WHETHER TO DISCHARGE EMPLOYEES OR TO PLACE THEM ON ADMINISTRATIVE LEAVE WHEN ALLEGATIONS OF SERIOUS MISCONDUCT WERE UNDER INVESTIGATION. I ALSO SERVED AS ACTING ATTORNEY GENERAL WHEN MR. MEESE WAS TRAVELING OUTSIDE OF WASHINGTON, D.C. -- ABOUT ONE-THIRD OF THE TIME. I SERVED AS ACTING ATTORNEY GENERAL ON ALL MATTERS IN WHICH MR. MEESE HAD RECUSED HIMSELF AS A MATTER OF LAW. AND I WAS ACTING ATTORNEY GENERAL ON ALL MATTERS AND INVESTIGATIONS AFFECTING MR. MEESE PERSONALLY.

IN MARCH 1987, DURING A WEEKEND I WAS SPENDING WITH MR. MEESE AT A JUSTICE DEPARTMENT CONFERENCE, I RECEIVED A TELEPHONE CALL FROM WILLIAM F. WELD, THE ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE CRIMINAL DIVISION. HE SHARED WITH me information he had received from the United States Attorney in the Southern District of New York. He told me there were serious allegations against the Attorney General growing out of the investigation in the Southern District of New York of the Wedtech Corporation, and involving the Attorney General's relationship with one E. Robert Wallach.

As the forward to the 814-page report of the independent counsel, dated July 15, 1988, states, on May 11, 1987, as Acting Attorney General, I asked Mr. McKay to undertake an investigation of Mr. Meese. I can tell you that it was not a happy moment for me. It was not a pleasant decision. I did not like it one bit. I had before me the recommendations of the Public Integrity Section and the Assistant Attorney General in charge of the Criminal Division who advised me there was evidence that Mr. Meese may have violated the

CRIMINAL LAWS OF THE UNITED STATES AND THAT FURTHER INVESTIGATION WAS REQUIRED.

AS THE INVESTIGATION GOT UNDER WAY AND CONTINUED, I LEARNED OF A NUMBER OF PROBLEMS ARISING OUT OF MR. MEESE'S INVESTMENTS WITH ONE W. FRANKLIN CHINN. MONTHS LATER I LEARNED FROM DEPARTMENT OFFICIALS OF ALLEGATIONS CONCERNING THE ATTORNEY GENERAL'S INVOLVEMENT IN THE IRAQI PIPELINE MATTER. SOON THEREAFTER I RECEIVED YET ANOTHER MEMORANDUM FROM THE PUBLIC INTEGRITY SECTION, THIS ONE REGARDING THE ATTORNEY GENERAL'S INVOLVEMENT IN THE BABY BELL MATTER. AGAIN, THE PROFESSIONAL PROSECUTORS WITH UNANIMITY AND WITH THE APPROVAL OF THE ASSISTANT ATTORNEY GENERAL OF THE CRIMINAL DIVISION ADVISED THAT THERE WAS EVIDENCE THAT A CRIME IN VIOLATION OF THE CONFLICT OF INTEREST LAWS MAY HAVE BEEN COMMITTED. THEREAFTER, I LEARNED OF YET ANOTHER MATTER INVOLVING THE BENDER FAMILY. I AM

NOT DETAILING ANY OF THESE MATTERS BECAUSE THEY ARE ALL COVERED IN THE REPORT OF THE INDEPENDENT COUNSEL AND NO PURPOSE IS SERVED BY REPETITION HERE.

THERE WAS ONE COMMON DENOMINATOR THROUGHOUT ALL OF THESE SEPARATE SITUATIONS. THAT WAS THE SAN FRANCISCO ATTORNEY E. ROBERT WALLACH.

ON APRIL 8, 1987, I ADVISED MR. MEESE THAT, IN MY JUDGMENT HE SHOULD DISTANCE HIMSELF FROM MR. WALLACH, THAT HE SHOULD SEVER HIS RELATIONSHIP WITH MR. WALLACH, AND THAT HE SHOULD REPUDIATE MR. WALLACH. MY ADVICE WAS NOT HEEDED.

IN TIME, IT BECAME APPARENT TO ME THAT THERE WAS A PUBLIC PERCEPTION THAT MR. WALLACH WAS BENEFITING TO THE TUNE OF OVER A MILLION DOLLARS FROM HIS RELATIONSHIP WITH

THE ATTORNEY GENERAL AND THAT HE WAS ACTUALLY OUT MARKETING THAT RELATIONSHIP. THERE WAS UNDOUBTEDLY A PUBLIC APPEARANCE OF IMPROPRIETY. MR. MEESE CONTINUED TO SUPPORT MR. WALLACH AND TO DEFEND MR. WALLACH IN THE PRESS, IN TESTIMONY BEFORE THE CONGRESS AND IN PUBLIC. THIS CONTINUED EVEN AFTER MR. WALLACH WAS INDICTED BY THE JUSTICE DEPARTMENT.

LET ME MAKE IT CLEAR THAT I VALUE FRIENDSHIPS. THERE IS PROBABLY NOTHING MORE IMPORTANT THAN TRUST AND LOYALTY IN A FRIENDSHIP. BUT THESE TRAITS MUST GO BOTH WAYS! IT WAS CLEAR TO ME THAT MR. WALLACH WAS ABUSING ANY FRIENDSHIP HE HAD WITH MR. MEESE.

AS TIME WENT ON, IT BECAME APPARENT TO ME THAT MORALE AT THE DEPARTMENT OF JUSTICE WAS DETERIORATING RAPIDLY. I HEARD COMPLAINTS EVERYWHERE. I HEARD STORIES OF EMPLOYEES BEING EMBARRASSED AND RIDICULED. ONE EMPLOYEE HAD TO LEAVE

A PARTY OF FRIENDS WHEN THE PERSONAL ABUSE BECAME INTOLERABLE. GRAFFITI CONTAINING OBSCENITIES APPEARED IN THE HALLS OF THE JUSTICE DEPARTMENT. ONE JUSTICE DEPARTMENT EMPLOYEE WAS UPBRAIDED BY A DESK CLERK AT A HOTEL ON CHECKING IN BECAUSE HE WAS ASSOCIATED WITH THE MEESE JUSTICE DEPARTMENT.

FROM MY VANTAGE POINT, I COULD SEE THAT PERFORMANCE BY THE DEPARTMENT OF JUSTICE WAS BEING IMPEDED BY A DEEP MALAISE THAT WAS SETTING IN BY VIRTUE OF MR. MEESE'S PROBLEMS AND THE PUBLIC OUTCRY FOR HIS RESIGNATION.

MOREOVER, MR. MEESE WAS RECUSED IN A NUMBER OF MATTERS AND RECUSALS MULTIPLIED BY VIRTUE OF HIS BEING DEFENDED BY A LAW FIRM WHICH HAD MANY MATTERS IN THE DEPARTMENT OF JUSTICE. THIS, COUPLED WITH THE DEVOTION OF ENORMOUS AMOUNTS OF DEPARTMENT TIME AND RESOURCES TO MR. MEESE'S DEFENSE, ADVERSELY AFFECTED MORALE AND PERFORMANCE.

FINALLY, IN MY JOB I WAS FACED WITH A NUMBER OF CASES WHERE I, WITH MR. MEESE'S APPROVAL, WAS CALLED UPON TO PLACE DEPARTMENT EMPLOYEES ON ADMINISTRATIVE LEAVE WHILE SERIOUS ALLEGATIONS OF MISCONDUCT AGAINST THEM WERE UNDER INVESTIGATION. EMPLOYEES INVOLVED RANGED FROM SENIOR OFFICIALS TO LINE PERSONNEL. I WAS CONFRONTED WITH THE ARGUMENT THAT IT WAS WRONG FOR US TO PLACE AN EMPLOYEE ON ADMINISTRATIVE LEAVE WHERE ALLEGATIONS WERE NOT AS SERIOUS AS THOSE FACING ATTORNEY GENERAL MEESE AND THAT THE SAME STANDARD SHOULD APPLY, THAT THE ATTORNEY GENERAL SHOULD BE MEASURED BY THE SAME STANDARD AS ANY OTHER DEPARTMENT EMPLOYEE AND, IF THERE WERE A DIFFERENCE IN THE STANDARD, THE ONE APPLYING TO THE ATTORNEY GENERAL SHOULD BE MORE STRINGENT. I HAD NO ANSWER TO THIS ARGUMENT.

DURING NOVEMBER, 1987, I BEGAN TO REALIZE THAT, WITH THE INVESTIGATION OF MR. MEESE STILL UNRESOLVED AND WITH ITS SCOPE SEEMINGLY CONTINUING TO GROW, THE MORALE AND

PERFORMANCE IN THE DEPARTMENT WOULD CONTINUE TO DETERIORATE AND PUBLIC CONFIDENCE IN THE DEPARTMENT OF JUSTICE WOULD CONTINUE TO ERODE.

APPARENTLY, MR. MEESE, TOO, WAS CONCERNED ABOUT THE DAMAGE. IN HIS RESPONSE TO THE REPORT OF INDEPENDENT COUNSEL (PP. 2-3) HE SAID:

> "IN A LETTER OF DECEMBER 1, 1987, WE REQUESTED THAT MR. MCKAY ANNOUNCE THE CONCLUSION OF HIS INVESTIGATION OF THE ATTORNEY GENERAL BECAUSE IT WAS 'IN THE NATIONAL INTEREST THAT PUBLIC SPECULATION OVER THE PROSPECTS OF THE PERSON OCCUPYING THIS OFFICE BE LAID TO REST PROMPTLY.' WE URGED HIM TO CONSIDER THAT 'THE ATTORNEY GENERALSHIP AND THE DEPARTMENT OF JUSTICE WOULD BE IMPROVIDENTLY HARMED IF PUBLIC SPECULATION IS PERMITTED TO ENDURE ANY LONGER THAN IS ABSOLUTELY NECESSARY.'"

IN NOVEMBER I CONCLUDED THAT JANUARY 5, 1988, THE SECOND ANNIVERSARY OF MY TENURE AT THE DEPARTMENT, WOULD BE AN APPROPRIATE TIME FOR ME TO LEAVE. OUT OF LOYALTY TO THE PRESIDENT, TO THE INSTITUTION OF THE DEPARTMENT OF JUSTICE AND BECAUSE I AM BY NATURE NOT A QUITTER, I HUNG IN AND DECIDED

TO CONTINUE. I WAS FIGURATIVELY ON MY PRAYER BONES HOPING THAT THE INVESTIGATION OF MR. MEESE WOULD BE RESOLVED, THAT EITHER HE WOULD HAVE THE GOOD SENSE TO STEP ASIDE PENDING THE RESOLUTION OF THE INVESTIGATION OR THAT HE WOULD BE EXONERATED.

MY SITUATION WAS EXACERBATED BY THE FACT THAT UNDER THE ETHICS IN GOVERNMENT ACT I WAS PRECLUDED FROM DISCUSSING THESE MATTERS WITH MR. MEESE. IT WOULD HAVE BEEN A VIOLATION OF LAW FOR ME, AS ACTING ATTORNEY GENERAL IN THE MATTER OF HIS INVESTIGATION, TO DISCUSS THEM WITH HIM.

I FOUND MYSELF LITERALLY BETWEEN A ROCK AND A HARD PLACE. I HAD BY THAT TIME CONCLUDED THAT, UNTIL THE MATTERS UNDER INVESTIGATION WERE RESOLVED, ONE WAY OR ANOTHER, MR. MEESE COULD NOT PROPERLY CONTINUE TO ACT AS ATTORNEY GENERAL.

AFTER DISCUSSIONS WITH MR. WELD AND OTHERS IN THE DEPARTMENT OF JUSTICE, AFTER DISCUSSIONS WITH A.B. CULVAHOUSE, Counsel to the President and Senator Howard Baker, the President's Chief of Staff, I decided that I had to leave. It became clear as a bell to me that I could no longer bear silent witness to the deterioration of morale, the paralysis in performance setting in in the Department and the continuing erosion of public confidence in the Department. I could not permit my silence and inaction to be construed as condonation of what was going on.

I concluded I had to do something. With my tongue tied by the confidentiality demanded of me by law, there was only one way I could make a statement that something was wrong. I chose it. I resigned.

Thank you. I will be happy to respond to any of your questions.

Senator KENNEDY. Mr. Weld.

STATEMENT OF WILLIAM F. WELD, FORMER ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. WELD. Thank you, Mr. Chairman. I do have a fairly lengthy statement, and I would ask that it be entered for the record and I will attempt to summarize it if that is agreeable.

Senator KENNEDY. It will be so included.

Mr. WELD. Mr. Chairman, I understand that today's hearing is called for the purpose of exploring the reasons why Mr. Burns and I resigned from the Justice Department.

I resigned on March 29, 1988, effective immediately, because I had come to the conclusion that the tenure of Mr. Meese as head of the Department was having, and would continue to have, as long as he held that office, a pronounced negative impact upon the Department.

I had had a close relationship with Mr. Meese, whom I have always liked personally. He is a wonderful man to work with. I had come to Washington to serve him. I have always regarded him as a highly intelligent and able man.

I think it is fair to say, as Senator Simon was intimating earlier, that I had come to the same conclusion that Mr. Meese was in the wrong job.

If I could echo a little bit of question that Senator Humphrey alluded to. I pointed out in a letter that I sent to staff a couple of weeks ago, that the reasons for my resignation had to do exclusively with Mr. Meese's tenure as head of the Department. And so, with his announcement that he is returning to public life, the occasion for my resignation, if you will, has disappeared. And I raised the question in my letter whether that circumstance moots the necessity for this hearing.

I understand though, since we are all here, that the committee does wish to proceed. And out of respect for the committee with whom I have always enjoyed a good relationship, I am happy to go into the reasons why I resigned in March.

I tend to share Senator Hatch's assessment of the accomplishments of the Justice Department under this Administration, both under Attorney General Smith and under Attorney General Meese. I am afraid that my report this morning will not be upbeat at all, because it concerns only the reasons for my resignation. But I didn't want Senator Hatch and others to think that that means that I think the performance record of the Department was sorry over the last 7 years. I think it has been excellent, thanks in large measure, I would say, to Rudy Giuliani's selection of U.S. attorneys back in 1981. And I would also say that both Attorney General Smith and Attorney General Meese have been great bosses to work with in a law enforcement context.

But to get to the question at hand, the reasons for my resignation, in setting out these reasons, I am really repeating, albeit in greater detail, what I already said to Mr. Culvahouse, to Senator Baker, to Attorney General Meese himself on the day we resigned, to the President, Vice President in April, and to staff of this committee.

The principal basis for my decision grew out of certain facts that came to my attention in April and May of 1987 and thereafter regarding Mr. Meese's relationship with Mr. E. Robert Wallach.

I believe the essential facts of this matter, at least the facts that are essential to my opinion, are not in dispute. So I don't think it's a question of some allegation being true or false or run up or knocked down. I think it's a matter of what legal conclusion you reach based on those facts.

Now, to test that proposition, I've set out the facts that I think are particularly germane here in my written statement, and numbered them 1 to 63, so that if there are disputes about any of these facts, that they can be referred to by number and the matter can be put to rest.

The list of 63 facts here describes, in my view, a violation of the standards of conduct for Federal employees embodied in the President's 1965 Executive Order, and also makes out a violation of the Federal Gratuity Statute.

Rather than recite them all, I think what I will do is use the same envelope I used to brief the President and Vice President in April, and just give the outline of those facts.

In brief compass then, and as I said at our meeting with the President and Vice President in April, the problem is this: the problem is the relationship with Mr. Wallach.

Back in 1981, Mr. Wallach advertised his close friendship with and access to Mr. Meese very publicly. He gave himself a big party out in San Francisco with judges, lawyers. It was reported in the press if you want to get your message heard in the highest counsels of the new administration, send a message to Ed Meese through me. I think it is fair to say that Mr. Wallach never hid his light under a bushel when it came to the closeness of his relationship with Mr. Meese, and his ability to get a message through instantly.

And if you read Mr. McKay's report, you will see time and again that Mr. Wallach could get through, even when Mr. Meese was in the middle of some other extremely important matter, and command his attention immediately.

Having advertised his access, Mr. Wallach then took action, based on that, and sent Mr. Meese what can only be described as a fairly steady stream of memoranda recommending action on a wide variety of issues, supplemented by telephone calls, personal meetings.

One of the topics that came in for a lot of recommendations was the plight of the well-built Wedtech Company in its efforts to secure contracts from the Government. And without rehashing the details to a fair thee well, Mr. Wallach sent Mr. Meese a lot of memoranda saying this company should get this big $30 million engine contract in 1982. And as Mr. McKay concluded, the actions of Mr. Meese, some personally and some through his deputies, were instrumental in getting this contract, that Mr. Meese took actions in 1983 with respect to the EDA subordination matter, also of great worth to the Wedtech Company. And Mr. Wallach was paid between $1.3 and $1.4 million for his services to Wedtech.

That is too much for a San Francisco tort lawyer helping out a company in a Government contracting context. It raises a question of what he is doing for them.

So I acknowledge that Mr. Meese is not demonstrated to have known exactly how much money Mr. Wallach was making off the Wedtech Company, but he did know that they had retained him. So he knew that Mr. Wallach was making money off of his performance for the Wedtech Company. And his performance consisted in large measure of official acts that Mr. Meese was doing for him.

On the Iraqi pipeline matter, again the single question in my mind is not was this wise, was this not wise, was there a reference in a memo to an illegal payoff, the single fact in my mind is that Mr. Meese took unusual actions to advance the ends that had been requested of him by Mr. Wallach. Mr. Wallach, within 2 hours of being retained by Mr. Rappaport, calls up Ed Meese. There is no doubt in Mr. Wallach's mind about why he has been retained. Mr. Meese understands that he has been retained by Mr. Rappaport.

Mr. Wallach says help us out with this pipeline.

As I said to Mr. Meese the morning that Arnie and I went in to resign, "Ed, I don't gainsay that there are other reasons why you might have wanted to push these two projects. Redeem the campaign pledge in the South Bronx, save our cities, peace in the Middle East." That is not the question though. The question is whether Mr. Meese is taking official actions that he knows are going to redound to the financial benefit of his friend. And I suggest that he did so. He did a lot on this Iraqi pipeline matter.

He put Wallach together with Mr. MacFarlane. He countenanced Mr. Wallach coming in, I think it's fair to say, although this is uncontested, not through ordinary channels through the office of legal counsel to get an opinion to move this thing along.

He corresponded in handwritten letters with Shimon Peres, huddled with him for 5 or 10 minutes with Mr. Wallach at a party at the embassy in Washington on precisely this topic.

So there is no doubt that he was front and center for this project at the request of Mr. Wallach.

The third area where Mr. Meese took unusual steps was the Baby Bell matter. Frankly, the connection of Mr. Wallach to that is a little bit more attenuated, but he did write Mr. Meese a memo in December of 1986, saying you really must look into this AT&T divestiture matter and try and unscramble this consent decree and release these restrictions on the Baby Bell matters. And Mr. Meese went to great lengths to be able to participate there.

Again, as I say, I am not sure that can all be laid at Mr. Wallach's door, but you do have the request from Mr. Wallach again.

There is no question that Mr. Meese delivers official acts—and I don't mean that word necessarily in a sinister context—but perform official acts at the request of Mr. Wallach, and that he knows these are going to financially benefit Mr. Wallach because he knows he is on retainer to Wedtech, he has so testified; he knows he is on retainer to Rappaport, he has so testified.

Mr. Wallach makes over a million and a half bucks on this. The problem comes in the fact that you have got things of value going the other way, from Mr. Wallach to Mr. Meese. You have got Mr. Wallach representing Mr. Meese for free, both before and after the

Jacob Stein investigation in 1984. You have got Mr. Wallach forgiving $65,000 in legal fees for the Stein investigation. You have got Mr. Wallach introducing the Meeses to a financial advisor who he tells them is going to make 20 percent for them. You have got Mr. Wallach sending $150,000 that he earned from Mr. Rappaport, and telling Mr. Meese about this, sending $150,000 to Mr. Chinn in San Francisco, where that became part of a pot of money that Mr. Chinn used to invest with for the benefit of all his clients, including the Meeses.

Mr. Wallach told Mr. Meese about this in the fall of 1986, as Mr. Meese again has acknowledged, and said, look, I am worried about how this is going to look. I knew all of this back in April and May of 1987 because, as Arnie said, we were sitting on the FBI reports and all the fruits of the investigation in New York, as well as the Independent Counsel's investigation, which had turned up some leads not irrelevant to this matter.

I knew at that point, although I couldn't share it, that Mr. Wallach had—and it's now public information—had not reported this 150,000 on his tax return. And that he went to Mr. Meese many months in advance of reporting this on his tax return, and said, "Ed, I am worried about this is going to look. It might look bad." Mr. Meese did not relay that conversation to anybody else.

The matter of the job for Mrs. Meese, and I do apologize for bringing in family members, it's not irrelevant legally though. Mr. Wallach knows that the Meeses need a certain amount of money to continue to stay in Washington in the public sector. He is all over this family in the real estate business like a barracuda, trying to get them to support this job for Mrs. Meese. He sends letters around, a copy to Mrs. Meese, and Mr. Meese testified, yes, I knew what Mr. Wallach was doing.

So they get the grant. And I am not saying that Mrs. Meese did not work for the money, wasn't worth that money and very much more. The fact is that Mr. Wallach was instrumental in getting that money; $15,000 of it is paid as an advance to pay year-end bills. Mr. Wallach says he is intimately acquainted with the amount of money the Meeses need, their financial needs as it were.

It's just too many things of value going back in the other direction.

I did not know at the time of the referral to Mr. McKay about Mr. Wallach arranging for the $80,000 unsecured loan in one day in 1983; about Mr. Wallach arranging a $260,000 loan in 1986; that he would only have buttressed my conclusion.

The law is that a loan, even at market rates, if it's valuable to the person who is receiving it, is a thing of value for purposes of the gratuity statute.

So those were the items of value passing in both directions that I thought raised this matter to the level of seriousness where I had to consider getting out of the Department.

I concluded that the whole ball of wax here gave rise to the appearance of partiality or preferential treatment on the part of Mr. Meese toward Mr. Wallach, and that it also constituted the use of Mr. Meese's public office for the private gain of Mr. Wallach. I don't think either of those things can be seriously argued. Well, both of those are violations of the standards of conduct for Federal employees, and they are fairly specific standards. Nothing so wooly as appearance of impropriety.

My professional opinion was that these facts, the facts that are set out in my written statement, also ran afoul of the Federal gratuity law, 18 U.S.C. 201, which is a 2-year felony provision applicable to anybody who "directly or indirectly gives, offers or promises anything of value to any public official for or because of any official act performed or to be performed by such public official," or anyone who "being a public official directly or indirectly receives, accepts, or agrees to receive or accept anything of value personally for because of any official act performed or to be performed by such official."

Now, because of my conclusion about the preferential treatment and the use of public office for private gain, I would have taken a hike whether or not I thought that this conduct was over the line of the Federal Gratuity Statute.

But, in any event, for the record, it was my view, and I did say to Mr. Meese, when Mr. Burns and I went in to see him on the morning of March 29, that I thought the conduct I have outlined here certainly would reach the conduct of Mr. Wallach and probably that of Mr. Meese as well.

A possible defense against the notion that this conduct infringes against the gratuity charge, as applied to Mr. Meese, is that all the things he received from Mr. Wallach were done in the name of friendship. They are very old friends. They are best friends. And that, therefore, these things had no relation to any of the official acts performed by Mr. Meese which benefitted Mr. Wallach.

My conclusion was there were simply too many official acts performed by Mr. Meese for Mr. Wallach, and too many financial benefits conferred by Mr. Wallach on Mr. Meese.

As I have noted, not only did Mr. Meese perform a lot of official acts, but he went to unusual lengths to achieve these results for his friend.

There were two prior instances where Mr. Meese was assailed for doing a favor for a friend, Mr. Barrack in one instance, Mr. McKean in another, who was appointed to a Federal position. I might say Mr. Wallach was also appointed to two Federal positions, partly at the instance of Mr. Meese. In those instances, you only had one thing on either side. Here you have got a course of conduct over a number of years.

I concluded that if Mr. Meese were an ordinary public official, he would be open to prosecution under the gratuity law. When I was the U.S. attorney in Boston, I recall we had a major case, Senator Kennedy, you may recall this, involving the Building Department of the City of Boston. And we prosecuted a number of building inspectors, public officials, who accepted gifts, even though they were from friends, and the friends said all they wanted to do was to get in good or stay in good, or say thanks or get the official to expedite some otherwise lawful official action. We got convictions in those cases.

When I was down in Washington at the Criminal Division, I personally reviewed and approved the indictment of a sitting U.S. Congressman, who had done something for a company in his district, and he had received two free trips to Florida from a business and social acquaintance of some standing. He was not only indicted but convicted of the gratuity violation in that case.

You will note, Mr. Chairman, that everything I've been saying relates to a fairly narrow point. Mr. Wallach, the standard of conduct, and the gratuity law. It doesn't relate to personal taxes or Iran/Contra of conflict of interest, or any of the very numerous other allegations that have been launched against Mr. Meese over the course of the last 2 years.

I simply felt that in trying to do favors for his friend, Mr. Meese had gotten drawn in over his head and over the line of what the law allows.

I did conclude that if these facts had been presented to me as a U.S. attorney in Boston, and the public official had been say the Deputy Regional Inspector of HHS, that I would have approved the case for prosecution.

But I have to say, in the same breath, that there is a considerable range of reasonable opinion among prosecutors in assessing cases for prosecution, particularly a case like this where the state of mind of the putative defendant and the state of mind of Mr. Meese would be critical, and any proceeding against him here is important. And I consider myself—and if you ask around in the Justice Department, I think others will support this view—I consider myself on the aggressive end of that spectrum, not the crazy end. We had a 97 percent conviction rate in Boston in 3,000 cases while I was U.S. attorney up there, and even in the corruption area, we convicted 108 out of 111. So I don't think we were zany.

But I do believe a responsible prosecutor could, as indeed Mr. McKay has done, reasonably reach the opposite conclusion on exactly the same facts that I have included in my written statement, and conclude that, because of the extremely close friendship between Mr. Wallach and Mr. Meese, that the items of value exchanged between them would not run afoul of the gratuity statute.

As I said earlier, I have recounted my reasoning here because the committee wants to hear it, and I think the committee is entitled to that. And this is nothing more than I said before to the executive branch.

I do think I should note that my prosecutive opinion on this is strictly academic because our system accords that determination to an independent counsel, Mr. McKay, who has conducted an extremely able and thorough job, and has concluded that no prosecution should lie here. So what I think is not only of merely historical interest in view of the fact that Mr. Meese has announced his intention to resign, it's also academic because it is not my call to make.

Finally, I would note with pleasure that another reason why this question is of only historical interest is because the Department is soon to be in the splendid hands of former Governor Thornburgh whom I consider probably the best qualified person in the United States to succeed Mr. Meese, not to mention my two close friends and former colleagues as U.S. attorneys from the initial freshman class of the Reagan administration, Frank Keating of Oklahoma, the Associate Attorney General designate, and Ed Dennis of Pennsylvania, the Assistant Attorney General designate in the Criminal Division, for both of whom my esteem knows no bounds.

That concludes my statement, Mr. Chairman. I will be happy to try to answer any questions.

[The prepared statement of Mr. Weld follows:]

STATEMENT OF WILLIAM F. WELD

U.S. Senate Committee on the Judiciary

July 26, 1988

Mr. Chairman and Members of the Committee:

I resigned from the Justice Department on March 29, 1988, because I had come to the conclusion that the tenure of Mr. Meese as head of the Department was having and would continue to have a pronounced negative impact upon the Department.

I understand that today's hearing is called for the purpose of exploring the reasons for the resignation of myself and Mr. Burns. As I pointed out in a letter to Committee staff delivered on July 12, 1988, Mr. Meese has announced that he plans to return to private life within the next few weeks. Furthermore, Mr. McKay, the Independent Counsel appointed to render a prosecutive determination on the allegations concerning Mr. Meese, has concluded that no prosecution of Mr. Meese should be instituted. Under these circumstances, as I said in my letter, the question arises whether the necessity for this hearing has not been mooted by events. Since the reason for my resignation concerned only Mr. Meese's tenure as head of the Department, and since Mr. Meese has announced he plans to resign in the near future, arguably considerations of fairness to Mr. Meese suggest that this hearing is no longer necessary.

I understand, however, that the Committee does wish to proceed with the hearing and, accordingly, I will inform the Committee of the reasons for the conclusion I reached in March 1988, that Mr. Meese should no longer continue to serve as head of the Justice Department. In doing so, I am only repeating, albeit in somewhat greater detail, what I have already said to Mr. Culvahouse, to Senator Baker, to Attorney General Meese, to the senior staff of the Criminal Division, to the President and Vice President, and to both majority and minority staff of this Committee.

The principal basis for my decision was certain facts that came to my attention beginning in April and May, 1987, regarding Mr. Meese's relationship with E. Robert Wallach. I believe the facts of this matter are not in dispute, so that it is not a question of an allegation being true or false, but rather a question of what legal conclusion you reach based on those facts. I will now set out those facts in numerical order, so that if there is a question about the accuracy of one or more of them, they can be referred to by number.

* * *

1. Prior to 1981, Mr. Wallach had been a personal injury lawyer in San Francisco.

2. Around the time Mr. Meese came to Washington in 1981, Mr. Wallach gave a lunch for himself in San Francisco, inviting various prominent attorneys and judges, at which he advertised his close friendship with and access to Mr. Meese, and encouraged those present to make use of his access to Mr. Meese if they wished to make their voice or message heard at the highest councils of the new Administration.

3. From 1981 to 1987, Mr. Wallach continued to advertise and promote his close relationship with Mr. Meese and his access to Mr. Meese, and in fact he did enjoy unparalleled access to Mr. Meese, both in the White House and at the Justice Department.

4. From 1981 to 1984, Mr. Wallach via numerous memoranda, meetings and telephone calls solicited Mr. Meese's help with respect to the contractual relations of Welbilt/Wedtech with the United States Government.

5. Mr. Wallach had no substantial prior expertise in Federal contracting work.

6. Mr. Meese, as White House counselor, responded to Mr. Wallach's requests for action. He took action himself and directed subordinates to take action that were instrumental in Wedtech's securing a $30 million engine contract in 1982. Mr. Meese's deputy, James Jenkins, went to unusual lengths to secure this contract for Welbilt/Wedtech, over opposition of other segments of the U.S. Government. Mr. Jenkins later wrote to

Mr. Meese that without Mr. Meese's leadership this contract would not have been secured for Wedtech.

7. Mr. Meese has testified that as early as 1981 or 1982, his understanding was that Mr. Wallach had a "consultant" or "retainer" agreement with Welbilt/Wedtech. (McKay Report, p. 241)

8. Between April 1982 and November 1982, Mr. Meese arranged for the appointment of Mr. Wallach to the United States Advisory Commission on Public Diplomacy. (M. 554)

9. In May and June 1983, Mr. Meese went to unusual lengths, at Mr. Wallach's request, to assist Welbilt/Wedtech with respect to resolution of the so-called EDA subordination matter, which was very important to Wedtech. (M. 181-216)

10. In September 1983, Mr. Meese needed to obtain a loan quickly to repay an $80,000 debt. Mr. Wallach called the chairman of a bank and arranged for Mr. Meese to received an unsecured loan for $80,000 that same day, September 14, 1983. Mr. Meese was aware of Mr. Wallach's role in this matter. (M. 544-546)

11. In late 1983, Mr. Wallach wrote to Wedtech that he was moving to Washington to devote full time to Wedtech and to his friend, Mr. Meese.

12. On January 23, 1984, or within a few days thereafter, it was announced that Mr. Meese would be nominated to be Attorney General and that Mr. Wallach would be his lawyer for his confirmation hearings.

13. On February 2, 1984, at Mr. Wallach's urging, the Wedtech officers agreed to pay Mr. Wallach $150,000 in advance for

services for the remainder of 1984. The check for $150,000 was delivered to Mr. Wallach on February 3, 1984. Wedtech officers recalled that Mr. Wallach was paid "up front" because he told them he would need the money while representing Mr. Meese in confirmation proceedings. One Wedtech officer recalled that Mr. Wallach stated he expected to be appointed to a senior executive position in the Department of Justice, such as chief of staff to the Attorney General. (M. 237-241)

14. In February 1984, Mr. Meese knew that Mr. Wallach was a "paid consultant" of Wedtech, Mr. Wallach's only known consulting client at this time, according to notes taken during preparation for Mr. Meese's confirmation hearings. (M. 241)

15. From January 1984 to March 1984, Mr. Wallach rendered professional services to Mr. Meese in preparation for and attendance at his confirmation hearings. Mr. Wallach made no charge for these services.

16. From March 1984 to September 1984, Mr. Wallach rendered professional services to Mr. Meese in connection with the investigation by Independent Counsel Jacob Stein. Mr. Wallach billed Mr. Meese $142,562.50 for these services. Mr. Meese has testified that it was his understanding that he was obligated to pay for these services. (M. 543-544)

17. In September 1984, Mr. Wallach asked the Wedtech officers for a prepayment of $500,000 for his services for the years 1985 and 1986. Mr. Wallach stated he needed the money because he was not being paid to represent Mr. Meese. Mr. Wallach stated that his representation of Mr. Meese would give him greater

access to the Administration, which Mr. Wallach would thereafter use to Wedtech's benefit. Mr. Wallach indicated he could not wait until 1985 to receive the money, which was negotiated down to a figure of $300,000, because he had to receive it in advance of his anticipated employment with the Justice Department. (M. 244)

18. Mr. Wallach was paid the $300,000 on October 27, 1984. (M. 246)

19. Mr. Wallach concealed the true nature of the $300,000 payment. (M. 246-247)

20. In January and February 1985, Mr. Wallach rendered professional services to Mr. Meese in connection with his resumed confirmation hearings, and made no charge for these services.

21. In late February 1985, Mr. Meese became Attorney General of the United States.

22. During the first half of 1985, Mr. Meese and Mr. Wallach did discuss the possibility of Mr. Wallach's accepting a position in the Justice Department. Mr. Wallach wrote a memorandum to Mr. Meese on May 1, 1985, expressing his interest in a position as "your chief of staff." (M. 254)

23. In May 1985, Mr. Wallach introduced Mr. Meese to Franklyn Chinn, an investment advisor, who agreed to handle the investment of all of the Meeses' securities, i.e. substantially all their liquid assets. Mr. Wallach told Mr. Meese that Mr. Chinn would be able to provide the Meeses with a 20% rate of return on their investments. (M. 110-111, 541)

24. It was Mr. Meese's understanding that Mr. Chinn was taking the Meeses on as clients only as a favor to Mr. Wallach. (M. 21)

25. Mr. Meese understood at that time that Mr. Chinn had some connection to Wedtech. (M. 274)

26. Mr. Chinn established accounts for the Meeses in San Francisco and Hong Kong.

27. On July 9, 1985, Mr. Wallach, Mr. Chinn and Wedtech officers met in Washington to organize efforts to obtain a 1986 pontoon contract and other Government contracts. The same day, shortly after the meeting, Mr. Wallach, Mr. Chinn and Dr. Rusty London, an associate of Mr. Chinn, visited Mr. Meese at his office at the Justice Department. (M. 266)

28. In July 1985, Mr. Wallach demanded an additional $150,000 from Wedtech as compensation for himself. He stated he did not want the $150,000 to be paid directly to him. Approximately $100,000 was paid to Mr. Wallach against this demand, between August 1985 and January 1986. Mr. Wallach concealed the nature of these payments. (M. 267-268)

29. Four former officials of Wedtech have stated that Mr. Wallach's principal role for their company from the beginning was to use his connections with Mr. Meese on the company's behalf. (M. 181)

30. At least one of the Wedtech officers stated that Mr. Wallach conveyed the impression he had made or would make provision to take care of Mr. Meese financially in the future.

31. One Wedtech official would testify that at some point he said to Mr. Wallach, "We should do something for Mr. Meese. He has been so helpful," or words to that effect. According to this official, Mr. Wallach replied that this matter should not be considered now, but at a later time. (M. 273)

32. On May 21, 1985, Mr. Wallach was retained by Bruce Rappaport, a Swiss businessman, to secure U.S. Government approval of the proposed construction of a pipeline from Kirkuk to Aqaba. (M. 647)

33. Within two hours of his retention by Mr. Rappaport, Mr. Wallach contacted Mr. Meese regarding this project. (M. 39, 647, 688)

34. Mr. Meese knew that Mr. Wallach was retained as an attorney by Mr. Rappaport. (M. 40, 648, 690)

35. Mr. Wallach had no substantial prior expertise in projects of this scale.

36. Mr. Wallach requested the assistance of Mr. Meese in advancing the project. Mr. Meese went to unusual lengths to comply. Mr. Meese:

(A) asked the National Security Advisor, Mr. MacFarlane, to meet with Mr. Wallach concerning the project (Mr. MacFarlane, who considered Mr. Meese his superior, did so);

(B) wrote a handwritten letter to Shimon Peres, the Prime Minister of Israel, regarding the project;

(C) had a personal meeting with Mr. Peres and Mr. Wallach at an embassy party in Washington in October 1985;

(D) made no objection to Mr. Wallach's attempting to secure a favorable legal opinion regarding the project from the Department of Justice without going through normal channels (M. 45); and

(E) made no objection to references in memos received by him from Mr. Wallach in September 1985 which strongly suggested that illegal payments would be made as a part of the proposed arrangement.

37. On or about August 8, 1985, Mr. Rappaport paid Mr. Wallach a fee of $150,000 for his services in connection with the pipeline project. Mr. Wallach directed Mr. Rappaport to wire the money directly to Mr. Chinn in San Francisco. (M. 689) This was not Mr. Wallach's usual procedure for the receipt of fees.

38. Mr. Chinn deposited the $150,000 into an account from which he made investments for his various clients, including Mr. and Mrs. Meese. Mr. Meese thus received some financial benefit from this $150,000.

39. Mr. Wallach did not declare the $150,000 on his tax return for calendar year 1985. (M. 6, 691)

40. In Mr. Wallach's accounting records, which were usually straightforward, his expenditures on the Rappaport/pipeline matter were disguised and concealed. (M. 42, 691)

41. On numerous occasions throughout Mr. Meese's tenure as White House counselor and as Attorney General, Mr. Wallach

stated that he wanted to help Mr. Meese with his financial affairs because he felt that Mr. Meese was sacrificing considerable financial gain by being in Washington and working in the Government. (M. 559)

42. In June 1985, Mr. Wallach met with friends of his in Washington and attempted to arrange a paying job for Mrs. Meese. Mr. Wallach met with Mr. Meese later that day. (M. 485-486)

43. In October 1985, Mr. Wallach went with Mrs. Meese to interview for a job which would pay $40,000 per year, which was the amount the Meeses felt they would need to continue in the public sector in Washington. (M. 494)

44. Mr. Wallach on October 16, 1985, sent a letter to the prospective employers, with a copy to Mrs. Meese, in which he states, "she, Ed and I remain very grateful to you for your efforts and energies to accomplish these worthwhile goals." (M. 496)

45. On October 21, 1985, Mr. Wallach stated to David Wigg of the National Security Council staff that Mr. Wallach wanted "to make money for Ed Meese," and that he wanted to help the Meeses improve their financial position because he felt they had suffered on account of Mr. Meese's life-long employment in public service. (M. 494-495)

46. In December 1985, Mr. Wallach was successful in arranging for the $40,000 per year job for Mrs. Meese, for three years. This was done with the knowledge of Mr. Meese. Mr. Wallach knew that the Meeses needed money to pay year-end

bills in 1985. Fifteen thousand dollars of the first-year salary was transferred to the Meeses' joint bank account in December 1985, as an advance against salary, for the payment of bills.

47. Between May 1985 and the end of 1986, Mr. Wallach and Mr. Chinn met with Mr. Meese at the Justice Department on a number of occasions. Mr. Chinn became a director of Wedtech in August 1985. Mr. Meese thereafter learned of this fact.

48. Mr. Wallach personally introduced the Wedtech officers to Mr. and Mrs. Meese at a ball in Washington, D.C., on September 10, 1985. Mr. and Mrs. Meese indicated a familiarity with Wedtech on this occasion.

49. In or around October 1985, Mr. Wallach agreed to accept $76,870.00 in full payment of his bill in the amount of $142,562.50, thus forgiving an indebtedness of $65,000 owing from Mr. Meese to him. (M. 40, 543)

50. In December 1985, and from January 1986 through October 1986, Mr. Meese promoted the candidacy of Mr. Wallach as alternate delegate of the United States to the Human Rights Commission of the Economic and Social Council of the United Nations, and later as Representative to the Human Rights Commission, with the rank of Ambassador. Mr. Wallach did serve as the alternate delegate and as the Representative of the United States to the Human Rights Commission, although he did not receive the rank of Ambassador. (M. 556-559, 36)

51. In January 1986, Mr. Chinn and Dr. London were negotiating with Wedtech for the payment of $1 million to compensate them for their efforts in connection with a recent

stock offering. According to Mr. Chinn, part of this money was to be paid to Mr. Wallach. Mr. Chinn and Dr. London received the $1 million from Wedtech on January 29, 1986.

52. Earlier that same day, Messrs. Chinn and London flew to Washington and had lunch with Mr. Wallach and Mr. Meese at the Justice Department. (M. 271-272, 534, 41)

53. At this lunch, Mr. Meese discussed with Messrs. Wallach, Chinn and London his desire to refinance his home mortgage in order to take advantage of lower interest rates. Mr. Wallach arranged for Mr. Meese to receive a $260,000 mortgage loan from a local bank, which was received in July 1986. (M. 547-548)

54. The total compensation received by Mr. Wallach from Wedtech for his professional services to Wedtech was between $1.3 million and $1.4 million. (M. 530) The total compensation received by Mr. Chinn and Dr. London as a result of their services for Wedtech was in excess of two million dollars. (M. 533)

55. Between July 10, 1985 and June 30, 1987, Mr. Chinn earned a net return of approximately $31,000 on the Meeses' investment of approximately $55,000, for an overall annual rate of return of approximately 25%. (M. 22) Mr. Chinn gave Mr. Meese preferential treatment over the course of the management of the account, through a consistent allocation of profitable trades in desirable "hot" issues to the Meeses' account. (M. 24)

56. In the Fall of 1986, Mr. Wallach told Mr. Meese that he had been paid more than $100,000 by Mr. Rappaport as a fee for his services in the Aqaba pipeline matter. Mr. Wallach told

Mr. Meese that he had instructed Mr. Rappaport to wire the money directly to Mr. Chinn, and that Mr. Wallach was worried as to how the handling of the fee received from Mr. Rappaport for the pipeline matter was going to look. Mr. Wallach expressed his concern that it "might look bad." (M. 690)

57. On November 12, 1986, it was announced at a morning Justice Department staff meeting that the Attorney General was to recuse himself from any investigation of Wedtech and any people involved with Wedtech, on the ground that he might be a witness.

58. In December 1986, as criminal investigations of Wedtech in New York were picking up in pace, Mr. Wallach indicated to the Wedtech officers (according to them) that he could intercede with Mr. Meese with respect to the investigation. On December 10, 1986, Wedtech discontinued the services of Mr. Wallach. On December 11, 1986, Mr. Wallach appeared unannounced at Mr. Meese's hotel room in New York City, when Mr. Meese was preparing for a network TV appearance, and engaged Mr. Meese in a private and very intense conversation for approximately twenty-five minutes. (M. 281)

59. In December 1986, Mr. Wallach wrote Mr. Meese a memorandum urging him to cause the Justice Department to reexamine certain restrictions on the so-called "Baby Bell" telephone companies, as embodied in the AT&T consent decree. Mr. Meese owned approximately $10,000 worth of stock in the Baby Bell companies at that time, constituting approximately one fifth of his total portfolio of liquid assets.

60. In December 1986 and January 1987, Mr. Meese took unusual steps so as to permit himself to participate in the AT&T divestiture consent decree matter. His office sought an opinion from the Office of Legal Counsel which would permit such participation, but did not inform the Office of Legal Counsel that Mr. Meese had been meeting during 1985 and 1986 with representatives of some of the companies. Mr. Meese's office also sought and obtained a waiver of conflict of interest rules from the White House counsel in January 1987, but did not advise the White House counsel that Mr. Meese still held title to the stock in the Baby Bell companies. At that time, Mr. Meese had been receiving, and holding, dividend checks and stock dividends for the Baby Bell stocks. (M. 356)

61. In March and April, 1987, Mr. Meese and Mr. Wallach discussed the possibility of Mr. Wallach's assuming the position of counselor to the Attorney General. Mr. Meese offered the position to Mr. Wallach. (M. 255, 258)

62. In April 1987, news accounts reported that Mr. Meese had, through his introduction of Mr. Wallach, arranged to have his assets invested by Mr. Chinn in San Francisco.

63. In or around May 1987, Mr. Wallach filed an amended tax return for 1985, in which he reported the receipt of the $150,000 from Mr. Rappaport as income to himself in 1985.

* * * * *

My conclusion was that this course of conduct gave rise to the appearance of partiality or preferential treatment on the part of Mr. Meese toward Mr. Wallach, and that it also constituted the use of Mr. Meese's public office for Mr. Wallach's private gain. Both of these circumstances are in violation of Presidential Executive Order 11222 (May 8, 1965), "Standards of Ethical Conduct for Government Officers and Employees."

I also considered that this course of conduct ran afoul of the federal gratuity law, 18 U.S.C. §201, which is a two-year felony provision applicable to anyone who "directly or indirectly gives, offers, or promises anything of value to any public official . . . for or because of any official act performed or to be performed by such public official," or anyone who "being a public official . . . directly or indirectly . . . receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official."

Because I had concluded that Mr. Meese's conduct over the years had given the appearance of partiality to Mr. Wallach, and constituted the use of Mr. Meese's public office for Mr. Wallach's private gain, I would have resigned from the Justice Department when I did irrespective of whether I had felt Mr. Meese's conduct also infringed the provisions of the gratuity statute. In any event, though, it was my view, as I advised Mr. Meese on the day I resigned, that section 201 certainly would reach the conduct of Mr. Wallach and probably that of Mr. Meese as well.

A possible defense against a gratuity charge being applied to Mr. Meese is that all of the things of value he received from Mr. Wallach were done in the name of friendship, and had no relation to any of the official acts performed by Mr. Meese which benefited Mr. Wallach. My conclusion was that there were simply too many official acts performed by Mr. Meese to benefit Mr. Wallach, and too many things of value conferred by Mr. Wallach on Mr. Meese, for a prosecutor to conclude as a matter of fact or law that the gratuity provisions of 18 U.S.C. §201 would not apply. Not only did Mr. Meese perform many official acts for the benefit of Mr. Wallach, but his efforts in that regard were unusual, in the case of Welbilt/Wedtech, in the case of the Iraqi pipeline, and in the Baby Bells matter. In return, Mr. Wallach appears to have become, over time, the financial "johnny on the spot" for Mr. Meese.

What distinguishes Mr. Meese's relationship with Mr. Wallach from the earlier situations involving his dealings with Mr. Barrack, and his dealings with Mr. McKean, where there was one loan on one side and one federal appointment on the other, is that there are so many more instances of value passing in both directions here. Nor were these ships passing in the night: it is well documented that Mr. Wallach enjoyed unparalleled access to Mr. Meese, and saw him frequently throughout the time Mr. Meese was in the White House and at the Justice Department. (M. 134)

I concluded that if Mr. Meese were an ordinary public official, he would be prosecuted under the gratuity law. When I was the United States Attorney in Boston, we successfully prosecuted building inspectors who accepted gifts from friends who maintained they merely wanted to "get in good," or "say thanks," or "expedite" an otherwise lawful official action. And when I was the head of the Justice Department's Criminal Division in Washington, I reviewed and approved the indictment of a sitting United States Congressman who took an action to benefit a company in his district and received two free trips to Florida from a business and social acquaintance who had an interest in the company. The congressman was indicted and convicted of a violation of the gratuity provisions of 18 U.S.C. §201.

In short, I came to the conclusion that this set of facts was sufficiently serious that I felt I could not continue as chief of the Criminal Division at the Justice Department.

* * * *

As you will see, my decision rested on a fairly narrow point, relating only to Mr. Meese's relationship with Mr. Wallach, and not to his personal taxes, or Iran-Contra, or conflict of interest, or the other allegations that have been raised against Mr. Meese over the course of the past year and a half. I simply felt that, in trying to do favors for his friend, Mr. Meese was drawn in over his head, and over the line of what the law allows. I do not believe Attorney General Meese is a venal man. I did conclude that if these facts had been presented to me as a United States Attorney in Boston, and if the public official involved had been, say, the Deputy Regional Administrator of the Department of Housing and Urban Development or Health and Human Services, I would have approved the case for prosecution, both as against the lawyer and as against the public official.

I might add that there is a considerable range of reasonable opinion among prosecutors in assessing cases for prosecution, especially cases such as this which turn upon the state of mind of the persons involved. And within that spectrum, I consider myself to be definitely toward the aggressive end. While we had a good conviction rate while I was the U.S. Attorney in Boston (97% conviction rate on 3,000 individuals and corporations prosecuted; convictions obtained and sustained in 108 out of 111 defendants in public corruption cases), still, I believe a responsible prosecutor could -- as indeed Mr. McKay has done -- reasonably reach the opposite conclusion on the above facts, and conclude that because of the close friendship between Mr. Wallach and Mr. Meese, the items of value exchanged between them would not run afoul of the gratuity statute.

I have recounted my own reasoning process here today because of my respect for the Committee, and because these facts are nothing more than I have previously recounted privately to a number of officials within the executive branch. I would note, though, that my personal prosecutive opinion on this point is academic, inasmuch as our system accords that decision to an independent counsel, who has determined specifically that in his judgment, the conduct I have described does not warrant a prosecution under the gratuity statute. I have great respect and admiration for Mr. James McKay and the thorough job he has done, and the conclusion he has reached is the definitive one under the statute.

Also, as I noted earlier, the question of why Mr. Burns and I resigned from the Department is of only historical interest, inasmuch as Mr. Meese has announced his imminent return to private life, and the Department is soon to be in the splendid hands of Governor Thornburgh, whom I consider to be the best qualified individual in the United States to succeed Mr. Meese as attorney general, not to mention my former colleagues as U.S. Attorneys, Associate Attorney General - Designate Frank Keating and Assistant Attorney General - Designate Ed Dennis, for both of whom my esteem and admiration knows no bounds.

Senator **Kennedy**. Thank you, Mr. Weld.

We will ask the clerk to notify us after 10 minutes have been utilized.

What finally pushed you over the edge to cause you to submit your resignation, Mr. Weld?

Mr. **Weld**. It was no one particular thing, Mr. Chairman. It was clear to me that the situation was not going to have any resolution. The desultory battle was going to continue, scrimmages throughout the summer. I thought that was intolerable for the Department. And it is true, I think, that Mr. Burns and I did intend to make a point by resigning on the same day. That was no coincidence.

Senator **Kennedy**. Mr. Burns responded to the public statement yesterday in which Mr. Meese criticized you on the handling of the preliminary investigation that led to the referral of the allegations against Mr. Meese to the Independent Counsel.

Do you have any response to that?

Mr. **Weld**. Not really, Mr. Chairman. As I said, there was a lot of evidence in that preliminary investigation, and it was handled by the Public Integrity Section and the FBI.

Senator **Kennedy**. Is there anything further that you want to tell us about the violations of the ethical standards?

Mr. **Weld**. I think I've went on to boring length.

Senator **Kennedy**. Mr. Burns, you mentioned earlier one of the aspects the Meese/Wallach relationship discussed in the McKay report.

I would like to ask you about the job offer to Mr. Wallach in early 1987. Would you expand on that description?

Mr. **Burns**. Yes, Senator.

Senator **Kennedy**. Briefly, if you could. We have got a lot of questions.

Mr. **Burns**. Okay. I told you that, on April 8, I suggested to Mr. Meese that he distance himself from Mr. Wallach. In reading the McKay report, we find on page 255 a recitation that, on April 17, prior to his Grand Jury appearance, Mr. Meese was interviewed by a special agent of the Federal Bureau of Investigation, with respect to the Wedtech criminal investigations.

The agent wrote: "Meese advised that Wallach was not considered for a position in the Department of Justice although he and Wallach did talk about taking a position. This discussion occurred in January or February of 1985. No specifics regarding that position were ever mentioned" at the agency.

Mr. Meese, 3 days later, tried to get hold of the agent, and the following day, 4 days later, Mr. Meese spoke by telephone to the special agent. He wrote down what took place in the conversation. He said that Mr. Meese advised that he was providing two additional pieces of information pertaining to matters covered in the previous interview. Mr. Meese made the following statements, as reported by the agent—I'm skipping the first one in the interest of time. It's on page 256 of the report.

> Meese advised that approximately 2 weeks ago, that would have been 10 days before his prior interview, Wallach was asked to serve as counsel on the personal staff of the Attorney General within the Department of Justice. Ken Cribbs, who had held the position, had left to take a position at the White House. Meese did not advise as to whether a decision had yet been made.

In October when he was before the Grand Jury, Mr. Meese was asked whether since that early 1985 time he had offered Mr. Wallach any position in the Department of Justice. Mr. Meese at first responded:

> That we may have had general discussions from time to time on one or more occasions, but I don't remember. But never to the point that I remember discussing a specific position.

Mr. Meese was shown the special agent's report of his April 21, 1987, statement. After reading the report, Mr. Meese testified that it refreshed his recollection, and that "I had discussed with Mr. Wallach the possibility of him serving on my personal staff to take Ken Cribbs' place."

Then Mr. Meese, and this is very important to me, testified, the Independent Counsel asked him a question. Do you recall telling Special Agent Murphy or, for that matter, do you recall telling Mr. Burns—because as I told the Independent Counsel, sometime after my April 6 meeting with him, I think it was on May 1, he told me that he had offered the job to Bob Wallach, and that the offer was still open and outstanding. And that appears in the McKay report.

So the counsel asked him,

> Do you recall telling Special Agent Murphy, or for that matter do you recall telling Mr. Burns, your Deputy, that you offered a job to Mr. Wallach, and that the job offer was still outstanding, and Mr. Wallach could take Mr. Cribbs' position at the Department of Justice?

Mr. Meese answered:

> This does refresh my recollection that I had done that. I had forgotten about that.

The significance of this is that, on "Nightline" last week, Mr. Meese inferentially impugned my veracity and my credibility and my integrity by denying that he had ever told me that he had offered this position to Mr. Wallach as the counsel to the Attorney General, and denying that he had told me that when he spoke with me on May 1, or thereabouts, that the position was still open and outstanding.

So Mr. Meese had been off again/on again Finnegan with respect to this testimony. The important thing is that he himself confirmed before the Independent Counsel that he had indeed told me precisely what I said he had told me.

Does that answer your question, sir?

Senator **Kennedy**. Yes. Further, did you draw any conclusion from the fact that he was at the time offering or appearing to offer a job to someone who was the target of a criminal investigation?

Mr. **Burns**. I deduced that when I told Mr. Meese on April 6 or 8—I'm having a little trouble right now with that date, one of the two days, it was a Thursday. When I said to him that he ought to distance himself from E. Bob Wallach, he responded by saying to me, well, he's going to be in my office tomorrow morning. Tomorrow is Friday, and he is on his way from Europe coming through Washington on his way home to California. And I advised Mr. Meese not to see him.

I do not know whether Mr. Meese did or he didn't. However, in putting together the dates and the testimony that I have just——

Senator **Kennedy**. Well, what was your reaction when he said that? You told him evidently that there was some investigation going on.

Mr. **Burns**. Yes. My reaction was, as I described to the independent counsel, one of a complete—I am not a poker player, but if I were, I had a poker face, and all I said was oh, and tried to show no sign of reacting whatsoever. And I immediately saw to it that a note was made of the conversation. And that has since been put together the fact, just deducing, if you reread my testimony, I think we can deduce that the offer was made after that meeting that I had with him.

Senator **Kennedy**. Let me ask Mr. Weld.

As a veteran prosecutor, do you think McKay is in a position to close the investigation on the Wedtech allegations?

Mr. **Weld**. I think at some point you have got to look for some surcease and repose, Mr. Chairman.

I am not privy to any discussions that Mr. McKay may have had with Mr. Giuliani about whether to put the case against Mr. Chinn, for example, in the can; that is, to say file in under seal with the court and then immunize him and compel his testimony.

I infer that the difficulty in doing that is that the subject matter of the immunized testimony would relate directly to the pending case in New York. I don't really know that.

You either close it up or you immunize some of the four people that you haven't heard from. Just taking into account everything I know about the universe from creation to date, I think there's a fair argument for folding up the tent.

Senator **Kennedy**. Senator Hatch.

Senator **Hatch**. Thank you, Senator Kennedy.

Mr. Burns, I have always appreciated working with you at the Department, and I personally consider you to be among those professionals—excuse me.

Let me yield to the distinguished Chairman, who I offered to do so before. Let me yield to him so he can make his statement. But I would like it not be taken on my time. If you could just take his statement now. He asked me to go ahead with the first question.

Senator **Kennedy**. The Senator from South Carolina.

Senator **Thurmond**. Thank you very much.

I have been to the White House at a meeting this morning, and I would like to ask one question here, and then I will ask Senator Hatch if he will take charge of the meeting and represent our side.

This is a question I would like to propound to both of you.

Mr. Burns, if you would answer that, and then, Mr. Weld, if you would answer it.

Do you have any recommendations regarding the Judiciary Committee's oversight responsibility of the Department of Justice, especially in light of the troubling period that the Department had recently been through?

Mr. **Burns**. My answer is no, I don't. However, I do think that it's a question of meaningful communication between the Department of Justice and this committee. And I think that there ought to be more collaboration, more sharing, more visitations, and less politics.

Senator **Thurmond**. Mr. Weld?

Mr. WELD. I would say, Senator, that the only thing I can think of is in confirmation hearings to examine the nominees on their views as to the role, if any, which they expect politics to play in law enforcement during their administration of their offices.

Senator THURMOND. Thank you very much, Senator Hatch.

Senator HATCH. Well, thank you, Senator.

Senator THURMOND. Thank you, Mr. Chairman.

Senator HATCH. Now, Mr. Burns, I'm going to start with you.

As you know, I've always had an appreciation working with you at the Department of Justice. I really do credit you in many respects to be among those professionals who I think has helped to bring about, as I do Mr. Weld, the successes of the Department. And I appreciate it and want you to know that.

But you, however, have painted a picture of "deep malaise" at the Department of Justice. In anticipation of that picture, I did inquire of various components of the Department of Justice about what they thought about the morale of the Department.

Now, let me just give you a cross-section of some of these responses, and I will put all of these—I would ask, unanimous consent, Mr. Chairman, put all these letters in the record so they can be viewed in public in complete context.

Senator KENNEDY. They will be so included.

Senator HATCH. Thank you, sir.

[The letters follow:]

U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

JUL 22 1988

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Due to Attorney General Edwin Meese's "Integrated Management System", the Office of Justice Programs (OJP) has received unprecedented attention from the Attorney General. He has been and is actively interested in all management and decision-making issues. No other Attorney General has exhibited such interest in improving the efficiency and integrity of OJP programs or has placed such a high priority on ensuring that OJP's congressional mandate meets the highest possible standards.

The Office of Justice Programs has implemented the Attorney General's hands-on management approach characterized by frequent visits and meetings with OJP's components staff and myself. His personal involvement has enhanced the smooth functioning and cooperation of the components of OJP.

Attorney General Meese has demonstrated a deep and abiding interest in OJP's state and local law enforcement activities and has exhibited tremendous personal concern for the success of OJP's Victims of Crime and Juvenile Justice and Delinquency programs. His unprecedented interest in research and statistical analysis has been energizing for our agencies components.

If you have any further questions or if I can be of further assistance, please do not hesitate to call.

Sincerely,

Richard B. Abell
Assistant Attorney General

U.S. Department of Justice

Office of Liaison Services

Director

Washington, D.C. 20530

July 25, 1988

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Thank you for your recent request for information regarding the relationship between Attorney General Meese and the work of the Office of Liaison Services of the United States Department of Justice. Mr. Meese has been the guiding force behind all of our efforts, and deserves recognition for the extraordinary contributions to law enforcement and the legal profession that he has made through our programs.

It must be noted that, before Mr. Meese became Attorney General, there was no branch of the Justice Department that was charged with developing and enhancing intergovernmental cooperation, foreign and domestic, in the fields of law enforcement and the administration of justice. Mr. Meese established the Office of Liaison Services in April 1986 and gave it that mission. Since that time the Office has become the focal point of contact between the Federal Government and the attorneys general, district attorneys, sheriffs, police chiefs, and other justice officials of the States, counties, and municipalities of our nation. The Office has also taken the lead in enhancing cooperation between the United States Government and foreign police and justice establishments, in particular breaking new ground in the Pacific Basin. Mr. Meese has been intimately involved in all of these activities.

Examples of Attorney General Meese's accomplishments in our area of responsibility are abundant. Permit me to list but a few:

- He fostered a program of cross-designation of prosecutors, particularly in drug-trafficking cases, thus permitting the formation of joint Federal-State prosecution teams able to follow investigations of organized crime activity with the most effective possible prosecution, whether in Federal or in State courts.

- He worked assiduously to promote the seizure of the assets of criminal enterprises, the liquidation of those assets for the benefit of further law enforcement operations, and the equitable sharing of the proceeds among the Federal, State, and local law enforcement agencies cooperating in the crime-fighting effort.
- Through his personal intervention and superintendence, the time required for the administrative processing of State and local applications for the equitable distribution of seized criminal assets was slashed dramatically.
- He was the guiding force behind the achievement of unprecedented levels of international cooperation against narcotics trafficking, an effort that led in 1988 to the interdiction of the largest trans-national drug deal ever recorded.
- He established a nationwide hot-line through which law enforcement officials could obtain up-to-date information on AIDS and its implications for the welfare of police officers and prisoner populations.
- He organized a standing quarterly "summit meeting" between key prosecutors and leaders of the nation's criminal defense bar.
- He convened a task force of Federal officials and State attorneys general to promote better attention to the legal problems of American Indian tribes and to eliminate friction between Federal and State governments in addressing them.
- He personally directed negotiations leading to agreement between the law enforcement community and firearms rights organizations on proposed legislation to deal with the problem of undetectable weapons.
- He stimulated law enforcement groups and universities to give serious attention to the future of policing, to the development of policing strategies, and to the evolution of police command-level and executive training.

- He met at length with officials of the government of Mainland China, and facilitated their contact with American legal officials and scholars, to assist China's reform of its laws and legal institutions in ways that enhance American interests and contribute significantly to the worldwide growth of the rule of law.
- He created a monthly national calendar of key events for the justice community.
- He has fostered unprecedented cooperation among Federal, State, and local levels of government in taking protective measures against terrorism, and he has personally intervened to develop similarly unprecedented levels of trans-Atlantic and trans-Pacific cooperation among nations in that effort.

It is important to stress that in all these activities and more, the role played by Attorney General Meese was direct and personal. His style of management is best characterized as "hands on." Throughout my tenure as Director of the Office of Liaison Services, a period now of some 17 months, our pattern of work has remained consistent: I meet daily with the Attorney General to obtain his guidance and to raise with him all major issues of substance for which I am responsible to him; on most days I see him more than once and I talk with him frequently by telephone; he is more than accessible — he is highly attentive.

Perhaps four law enforcement professionals working at the State and local levels have best summarized Mr. Meese's achievements:

- **Newman Flanagan** (D-Boston), the District Attorney of Suffolk County, Massachusetts, has described Mr. Meese's contributions as Attorney General in these words: "He's been an extremely important person for law enforcement throughout this country. He's been a giant. He has taken law enforcement from a splintered group of people with their own egos and their own turf and built it into a network of people willing to cooperate and coordinate their efforts. Ed Meese has been of great value to law enforcement and a great detriment to the criminal element."

- **Hubert Williams**, former Chief of Police of Newark, New Jersey, and currently the President of the Police Foundation, recently said: "Ed Meese has shown a greater sensitivity to law enforcement than any Attorney General I've known — and a special sensitivity to the police."

- **Richard M. Daley** (D-Chicago), the State's Attorney of Cook County, Illinois, has said: "Ed Meese has shown himself to be law enforcement's best friend."

- **Richard Arcara** (R-Buffalo), then the District Attorney of Erie County, New York, and the President of the National District Attorney's Association, and a former United States Attorney under Presidents Ford and Carter, observed: "I have served under three Attorneys General and known many more. In my opinion, Edwin Meese is the greatest Attorney General in my lifetime."

Morale among the staff of this Office is, and has been, very high. More people — from both within and without the Department of Justice — have applied to join our staff than our budget could possibly afford. Our productivity has increased steadily. The controversies that have swirled about the Attorney General in the news media have been utterly irrelevant to our work and have not in the least impeded our access to him. Neither have they diminished the leadership that he has furnished to us. It is fair to say that Edwin Meese founded our Office; has directly guided it throughout its existence; and is personally responsible for every major success that we have been able to contribute to the administration of justice.

I hope that you find this information helpful.

Sincerely yours,

Joseph A Morris

Joseph A. Morris

U.S. Department of Justice
Land and Natural Resources Division

Office of the Assistant Attorney General
Washington, D.C. 20530

Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

In response to your request for information concerning the effect of recent events regarding the Attorney General upon the work of the Land and Natural Resources Division, I am pleased to report that this Division is functioning smoothly and efficiently. Indeed, during the past three years the Lands Division has established an unprecedented record of prosecuting violators of the environmental laws, defending programs essential to our national security, and maintaining the superb quality of our traditional litigation responsibilities. Among the highlights of our recent accomplishments are the following:

Environmental Enforcement

o In the last three years our Environmental Enforcement Section has grown 215%, increasing from 55 civil attorneys at the end of fiscal year 1984 to 120 attorneys today.

o In fiscal year 1987 alone this Division instituted over 300 environmental enforcement actions compared to 358 cases filed during the entire four years of the Carter Administration.[1]

o We have fashioned new arrangements with EPA for streamlining environmental enforcement referrals to the Division, so that we may more quickly file and prosecute individuals and companies violating the environmental laws. These measures include the publication of policies on enforcement priorities, settlement criteria and assessment of penalties.

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[1] This does not include wetlands cases under Section 404 of the Clean Water Act, nor cases against violators of Wildlife Protection Acts.

In this way, we also ensure that the regulated community is well informed of its obligations.

- The largest private cleanup of a hazardous waste site was negotiated recently with the Texas Eastern Gas Pipeline Co., which illegally disposed of PCB-contaminated waste oil along a 13-state pipeline route. The consent decree obligates the company to a cleanup of an estimated $400 million as well as to pay a $15 million civil penalty.

- We recently negotiated an agreement between the United States and Shell Oil Company in a Superfund action arising at the Rocky Mountain Arsenal near Denver. The clean-up is by far the most expensive ever, costing and estimated $750 million to $1 billion dollars, and demonstrates successful cooperation between the public and private sectors.

- This Division played a major role in strengthening and reauthorizing the Superfund statute, enacted as the Superfund Amendments and Reauthorization Act (SARA) of 1986. This landmark legislation insures the continued vitality of this nation's hazardous waste cleanup program.

Environmental Crimes

- During the prior administration enforcement of the criminal provisions of the environmental statutes was sporadic and infrequent.

- In 1987, the Attorney General created the Environmental Crimes Section within the Land and Natural Resources Division, charged with prosecuting those who commit environmental crimes.

- During 1987 alone, 127 defendants were indicted with 86 defendants pleading guilty or convicted at trial. About two-thirds of all indictments are against individuals. A large percentage of them are high-level corporate officers engaging in willful disregard of the public health and safety. In fiscal 1987 alone, over $3 million in fines, and over 32 years of jail time, were levied by the courts.

- The Crimes Section works closely with the FBI, U.S. Attorney's Offices and state Attorneys General in the investigation and prosecution of environmental crimes. It also coordinates prosecutions with the Criminal Division when organized crime or public corruption is involved.

o The Division's prosecution of criminal violations of environmental statutes has utilized new legal theories and expanded into new areas. We recently obtained the first-ever felony conviction under RCRA for a "knowing endangerment" violation (U.S. v. Protex), and obtained the first indictment for environmental crimes allegedly committed by federal employees (United States v. Kruse -- prison employees illegally dumping hazardous waste). We also obtained a conviction for illegal disposal of a dangerous chemical frequently used to make cocaine. (United States v. Tumin). In addition, the largest case to be indicted to date is scheduled to be tried this fall against 19 individuals and two corporations for alleged violations of several environmental laws, including the first indictment for violations of the Ocean Dumping Act. (United States v. Baytank). In another case scheduled for trial, several individuals were indicted in the first environmental case to include charges involving RICO. (U.S. v. MacDonald and Watson).

Wildlife Protection

o During the past three years we have convicted hundreds of violators of statutes such as the Endangered Species Act, Marine Mammal Protection Act and Bald and Golden Eagle Act.

o We participated in the 1987 and 1988 annual meetings of the International Whaling Commission, spearheading the drive to enforce the global moratorium on commercial whaling. We have also assisted the Commerce Department and State Department in negotiating agreements with foreign powers to ensure whale protection, and when necessary, to enforce trade sanctions against violators.

Other International Agreements

o We participated actively in the negotiation of the Montreal Protocol for protection of stratospheric ozone, and participated in bilateral talks with the Canadians concerning reduction of transboundary pollution.

National Defense

o We have successfully defended lawsuits brought to halt the conduct of laser experiments as part of the strategic defense initiative, the homeporting of nuclear aircraft carrier groups, the basing of MX missiles and the construction of an emergency communications network, for use of an emergency communications network, for use in the event of a nuclear war.

In all of these endeavors I have had the full support and invaluable assistance of the Attorney General. I can categorically say that, despite his myriad of other duties and the tremendous demands upon his time, Mr. Meese has never neglected the important work of the Land and Natural Resources Division.

I hope you find this information helpful. I would be happy to provide you with further information should you desire it.

Respectfully,

James L. Byrne

for: Roger J. Marzulla
Assistant Attorney General

U.S. Department of Justice

Washington, D.C. 20530

JUL [illegible]

Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

This is in response to concerns expressed with regard to the capacity and function of the Department of Justice in light of the recent personal issues raised with regard to the Attorney General. The purpose of this letter is to make it clear that the Justice Management Division has not suffered any diminution of capacity to perform its mission and function as a result of these problems.

The Justice Management Division is the management arm of the Department of Justice with responsibility for the provision of support services in a variety of substantive areas, such as budget, finance, personnel, procurement, facilities, automated information systems, payroll, equal employment opportunity, and security. These services are provided to virtually all components of this Department, in one way or another, and have continued unabated over the last several years. A few examples may serve to suffice in terms of describing our activities.

- Budget formulation and execution are among the most important functions of the Division. At any given time, we are involved in budget formulation for three different fiscal years and execution and accounting activities for several others. To my knowledge, the Department has enjoyed a significant degree of budgetary success due, in large measure, to the success of our Budget Staff in working with components in the Department and across the Government.

- Procurement is another major area of activity. Over the last several years, it has increased dramatically in both numbers of contracts awarded and total dollars expended. We are now a billion dollar procurement agency ranking ninth in the Federal Government and have been steadily increasing the number and sophistication of our procurements, especially in the area of automated information systems.

- In light of the major increases in staffing achieved by the Department over the last several years, our Personnel Staff has played a major role in bringing thousands of new Federal employees on board. We have been able to recruit successfully in virtually all areas of specialty and have insured that the components we have served have been able to find qualified staff for important new positions.

- In the area of Automated Information Systems processing, in which we serve all but the Federal Bureau of Investigation, we have, over the last 12 months, identified (and are in the process of moving into) new data centers in Dallas, Texas, and Rockville, Maryland. In addition, we are adding several large new mainframe computers and are in the middle of the creation and establishment of major new telecommunications network. Usage of our facilities by departmental components is skyrocketing.

In addition to support services, we are also responsible for the development and implementation of departmentwide policy in the areas described above. To my knowledge, we have been able to define such policy clearly and implement it successfully.

In addition, we have very effective internal control mechanisms established, through both the Audit Staff and the Office of the Procurement Executive, to insure that activity in these areas is conducted with propriety.

In closing, let me emphasize once again that I do not believe the personal matters related to the Attorney General have had any impact on the operations of this Division. In fact, the morale of this Division has been maintained at a high level, and we are indeed functioning quite effectively.

Sincerely,

Harry H Flickinger

Harry H. Flickinger
Assistant Attorney General
for Administration

U.S. Department of Justice
Drug Enforcement Administration

Office of the Administrator
Washington, D.C. 20537

July 25, 1988

Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510-4402

Dear Senator Hatch:

I have served in my present capacity during the entire tenure of Edwin Meese III as Attorney General of the United States. Because the drug abuse problem has been designated as the highest priority in this Department of Justice, and in this Administration, I have enjoyed direct personal contact with Attorney General Meese on a regular basis and have traveled extensively with him to drug source countries, and to international narcotics meetings, consistent with the high priority given to this issue.

Attorney General Meese has provided the hands-on leadership which has enabled the United States to seek and to secure cooperation from the highest officials of other countries on drug enforcement programs. That personal involvement is unique to the Office of the Attorney General. In addition, Attorney General Meese personally has assured the stability and growth of the Drug Enforcement Administration, has fostered closer cooperation among law enforcement at all levels, and had engendered closer relationships among all components of the Department of Justice with United States Attorneys throughout the country.

Attorney General Meese has provided outstanding leadership and direction in dealing with drug issues throughout the past three years. I have seen no diminution of interest, of focus, or of time dedicated to the drug issue by Attorney General Meese during his tenure as our 75th Attorney General.

By way of example, in April of this year, Attorney General Meese led a U.S. delegation on a five nation trip to Latin America where he met with political leaders, military leaders and law enforcement leaders to discuss international narcotics issues. In addition to these protocol meetings, Attorney General Meese visited law enforcement personnel in jungle camps and overflew coca cultivation areas in hostile locations at great personal risk, in order to foster international law enforcement cooperation.

I have been honored to serve under his leadership.

Sincerely,

John C. Lawn

John C. Lawn
Administrator

U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 Eye Street N.W.
Washington, D.C. 20536

Honorable Orrin G. Hatch
United States Senate
135 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Hatch:

In conjunction with the upcoming hearing regarding the management of the Department of Justice, I understand that you are interested in receiving comments from some of the senior managers of the Department. I am most pleased to provide some comments to you and the Committee for your consideration.

I have been the Commissioner of the Immigration and Naturalization Service (INS) for almost seven years. I started in September 1981 in an acting capacity and was confirmed by the Senate in February 1982. The INS is the second largest component of the Department of Justice, exceeded in size and budget only by the FBI. The substantive and management issues facing the INS are extremely varied and often complex. Our functions cut across many areas of the Justice Department and other agencies of the government. Within Justice, in addition to our immigration functions, INS deals extensively in matters such as drugs, criminal prosecutions, prison issues and civil litigation. Therefore, on the basis of my seniority (the second most senior of high level Justice officials), the size of our organization (15,000 employees and over $1 billion a year budget) and involvement in a variety of issues noted above, I am in a good position to assess the effectiveness of the internal and external management of the Department of Justice. I have reported to a number of Associate and Deputy Attorneys General that encompass a wide variety of management styles. These include former Associate Attorney General Rudy Guiliani and former Deputy Attorneys General Ed Schmultz, Lowell Jensen and Arnold Burns. Currently, I report to Acting Associate Attorney General Frank Keating. This, of course, is in addition to extensive dealings with former Attorney General William French Smith and Attorney General Edwin Meese III. Also as background is the fact that I managed several large state agencies in California during the Reagan Governorship, and held a senior management position in the largest private corporation in California, The Pacific Telephone & Telegraph Company.

Through all of this period I have been impressed with the overall management of the Department of Justice and the Department's abilities to effectively carry out its mission and provide leadership in areas of law enforcement, both within the Administration and Congress, and with outside groups such as the law enforcement community. This comment is particularly applicable to the management of the Department during the tenure of Ed Meese. Despite the external challenges to Ed Meese, the Department has been very well run. While management styles differ, it is important to focus on the bottom line - the results, not the rhetoric. Ed Meese has the best understanding in recent times, if not in history, of the workings of law enforcement and he has pursued very effective policies in such area. In addition as far as internal management, Attorney General Meese spent significant time visiting the managers and employees of all components of the Department and was very supportive of their missions and accomplishments. While the external challenges were difficult and unpleasant for all in the Department, I observed no negative impact on operations or results.

Ed Meese deserves the highest credit for his effective efforts to maintain operations and successful movement of the programs and policies of the Department. I believe any objective observer must conclude that the Department of Justice under Attorney General Meese's management and leadership accomplished outstanding results for the administration of justice in the United States.

I would be pleased to respond further or provide any additional information which you or the Committee might desire.

With best regards.

Sincerely,

Alan C. Nelson

Alan C. Nelson
Commissioner

U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director *Washington, DC 20534*

July 25, 1988

Honorable Orrin Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

Pursuant to your request, I am writing to convey my impressions of the Department of Justice operations since my appointment as Director of the Bureau of Prisons on July 1, 1987.

In my view, the mission and programs of the Bureau of Prisons have been significantly advanced during the last year with the support of the Department of Justice, and in particular, the leadership of Attorney General Meese. This is most easily seen when we discuss the Cuban crises that occurred in November/December, 1987 at the Federal Detention Center at Oakdale and the United States Penitentiary at Atlanta. The Attorney General took an immediate leadership role, led internal work committees, conducted daily briefings, obtained support from the Defense Department, and provided overall management of a very complex crisis. In addition, the Attorney General took time on Thanksgiving Day to call the families of the hostages in both Oakdale and Atlanta, and at the conclusion of the uprisings, accompanied me on visits to both facilities.

The Attorney General's influence and his support of correctional issues has been particularly valuable to the Bureau of Prisons in a time of unprecedented prison overcrowding. Through his leadership and personal intervention, the Bureau of Prisons has been able to obtain the resources necessary to work toward our goal of keeping up with the increase of new prisoners as well as reducing the level of overcrowding.

I have been very impressed with the Attorney General's responsiveness to issues that I bring to his attention and requests I make for him to attend meetings that I am hosting. Through his personal intervention on a new OPM regulation that would have severely hampered our recruitment efforts, I was able to quickly meet with top OPM officials and rectify the problem. The Attorney General took time during the past year to attend our National Wardens Conference, as well as attend a Conference on Issues in Corrections, and an awards ceremony for staff of the Bureau of Prisons.

In my view, the Attorney General has made substantial contributions to the field of corrections during his tenure as Attorney General. There has been no issue which I have brought to his attention which I do not feel I received his immediate and total support.

Sincerely,

J. Michael Quinlan
Director

U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 25, 1988

The Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

This letter responds to your request for the views of the heads of the Department of Justice's components with respect to claims that morale in the Department has suffered as a result of the allegations concerning illegal activities of the Attorney General.

My view of morale in the Antitrust Division today is the same as it was when I responded to a similar question from Senator Metzenbaum at a hearing before the Senate Subcommittee on Antitrust, Monopolies, and Business Rights on March 31, 1988, just two days after Messrs. Burns and Weld resigned. At that time, I noted that the Division's employees were working harder and more productively than at any time in recent history. For example, we now have about three times the number of grand juries investigating allegations of antitrust crimes as we did eight years ago. We are also reviewing a record number of mergers. And the dedicated men and women of the Division are doing all this and more despite the fact that their numbers have been reduced by almost one-half in recent years. No matter how they are "sliced," the statistics reveal that the Antitrust Division is more successful -- and by a wide margin -- at finding, investigating and prosecuting white-collar crimes than at any time in its history.

The Antitrust Division's record could not have been compiled by a demoralized organization that has ground to a halt. The support for the Division at the highest levels, including the Attorney General, has played an important role in our success. Whenever we have needed decisions from the Attorney General, he has responded. If there is a threat to our efficiency and effectiveness, it is the all-too-real threat that Congress may ignore the Administration's request for a small increase in the Division's staffing in fiscal year 1989 and may instead cut the Division's staffing further.

I trust this letter and the outstanding record of the public servants in the Antitrust Division provide a sufficient response to your inquiry.

Sincerely,

Charles F. Rule
Assistant Attorney General

Senator HATCH. Joe Morris, Director of the Office of Liaison Services, said:

> Morale among the staff of this office is and has been very high. Our productivity has increased steadily. The controversies that have swirled around the Attorney General in the news media have been utterly irrelevant to our work and have not in the least impeded our access to him. Neither have they diminished the leadership he has furnished to us.

Rick Rule, the Antitrust Division Assistant Attorney General, said, among other things:

> The Division's employees are working harder and more productively than at any time in recent history. The Antitrust Division's record could not have been compiled by a demoralized organization.

Michael Quinlan, Director of the Bureau of Prisons, said:

> The mission and programs of the Bureau of Prisons have been significantly advanced during the last year with the support of the Department of Justice and, in particular, the leadership of Attorney General Meese.

Alan Nelson, the Immigration and Naturalization Service Commissioner, said:

> While the external challenges were difficult and unpleasant, I observed no negative impact on operations or results. Ed Meese deserves the highest credit for his effective efforts to maintain operations and successful movement of the programs.

John Lawn, Drug Enforcement Administration Administrator:

> Attorney General Meese has provided outstanding leadership and direction in dealing with drug issues through the past three years. I have seen no diminution of the interest, focus, or of time dedicated to the drug issue.

Rich Abell, Assistant Attorney General for Justice Programs:

> No other Attorney General has exhibited such interest in improving the efficiency and integrity of OJP programs. His unprecedented interest in research and statistical analysis has been energizing for our agency's components.

Harry Flickinger, Assistant AG for Administration:

> I do not believe that the personal matters related to the Attorney General have had any impact on the operations of this division. In fact, the morale of this division has been maintained at a high level and we are indeed functioning quite effectively.

Roger Marzulla, Assistant AG for Lands and Natural Resources:

> I am pleased to report that this division is functioning——

Mr. BURNS. Excuse me, Senator. Who was the last one?

Senator HATCH. Roger Marzulla, Marzulla, the Assistant AG for Lands and Natural Resources.

> I am pleased to report that this division is functioning smoothly and efficiently. Indeed, during the past three years, the Lands Division has established an unprecedented record.

And I could report on other components of the Department. Let me just put those various letters into the record as we've already done.

But, suffice it to say, that the reports that I received back were unanimous, and I think they are worthy of being read by the public.

Do you have any reasons to doubt the accuracy of the reports?

Mr. BURNS. First of all, I want the record to be very clear that you mentioned Rick Rule, Mike Quinlan, Al Nelson, Jack Lawn, Rich Abell, Harry Flickinger, Roger Marzulla.

Senator HATCH. Right.

Mr. BURNS. These are outstanding men, each and every one of them. And many of the things that they said I would have agreed to—do agree with to start with.

That is the reason why the Department of Justice compiled the marvelous record that you mentioned in your opening statement, and to which we have each adverted.

Senator HATCH. And which is very seldom mentioned around this town. We just have the Justice Department constantly maligned as though it's a totally unfunctioning outfit because Ed Meese has had some difficulty, which he explains he would have to handle after hours, after working 12 hours a day.

Mr. BURNS. The fact is that I was in a much better position than each of them, and I have had occasion to speak to people in the ranks, the Bureau of Prisons and other places.

Senator HATCH. Sure.

Mr. BURNS. Now, if you want to get some sterling accolades and encomia kudos about Meese, Senator, I suggest that you ask my immediate subordinates. They will all say the right things.

I am not discrediting anything that they have said. They are fine people, everyone of them.

Senator HATCH. You don't think any of them would cloud this issue, do you?

Mr. BURNS. No, I don't. But I do think that when put to—when the question is put to them for the purpose of this, you might not get a completely valid——

Senator HATCH. Well, isn't Ed Meese putting it to them?

Mr. BURNS. I understand. I understand. But for the purpose of this hearing, and I credit each and every one of them with being men of honor.

Senator HATCH. Well, I do too.

Mr. BURNS. And therefore if there's a difference of opinion between us, then let's put it down at that. But I was in a better position to have the overall picture than either of them.

Senator HATCH. I understand your answer.

But, as I said earlier, productivity does not rapidly and markedly increase during periods of low morale or deep malaise. And that's the point I am trying to make.

Mr. BURNS. And the point that one has to ascertain is what would have happened but for this.

Senator HATCH. So you are saying it could have even been a greater record than this wonderful record, and you can explain it.

Mr. BURNS. I know that. Also I want you to understand that I think all of these people that you have mentioned are political appointees of Mr. Meese.

Senator HATCH. Well, let me just say that I would like to introduce into the record a series of graphs which I asked my staff to prepare in each of the following categories. 1987's productivity is comparable to our outstrips 1986 and the previous years.

In fact, these graphs show that the Reagan Justice Department has significantly outperformed its predecessor. And the various categories are tax cases brought, foreign extraditions, fugitives apprehended, environmental cases initiated, drugs seized, Mafia members convicted, drug lands seized, prisoner population, seized assets from criminal activity, organized crime cases commenced, drug exhibits analyzed on white collar crime cases commenced.

Now, needless to say, as you've agreed, and I think Mr. Weld has agreed, this is an outstanding record. You know, I just want to point that out. And I think that it is something that needs to be pointed out.

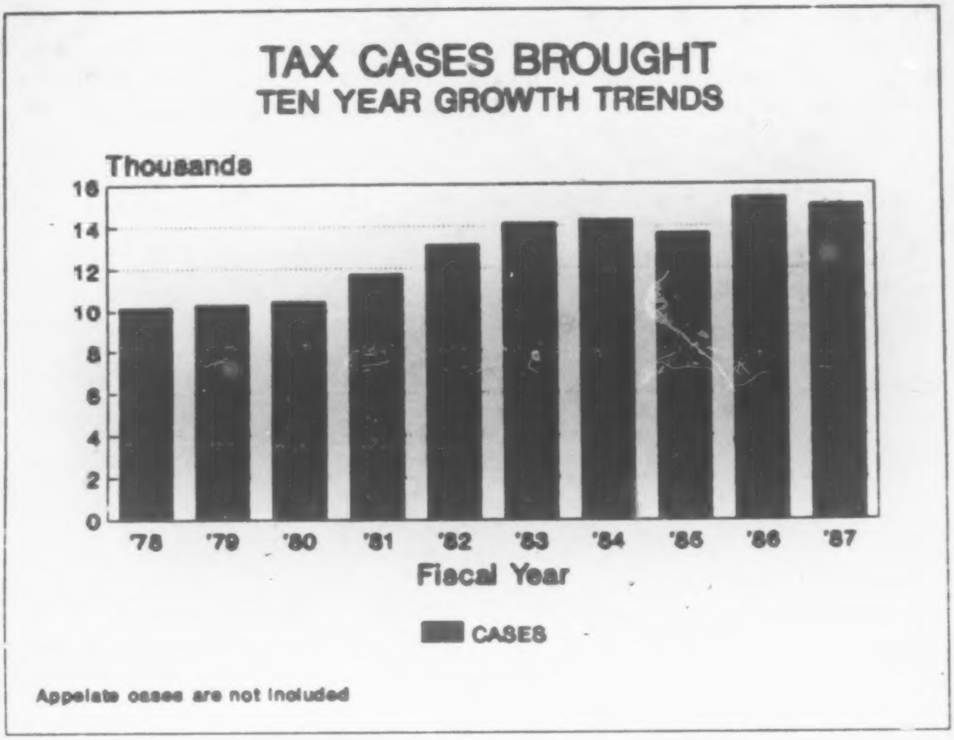
Mr. **Burns**. It's also a record of which——

Senator **Hatch**. Can I have that also in the record?

Senator **Kennedy**. It will be so included.

Senator **Hatch**. Thank you.

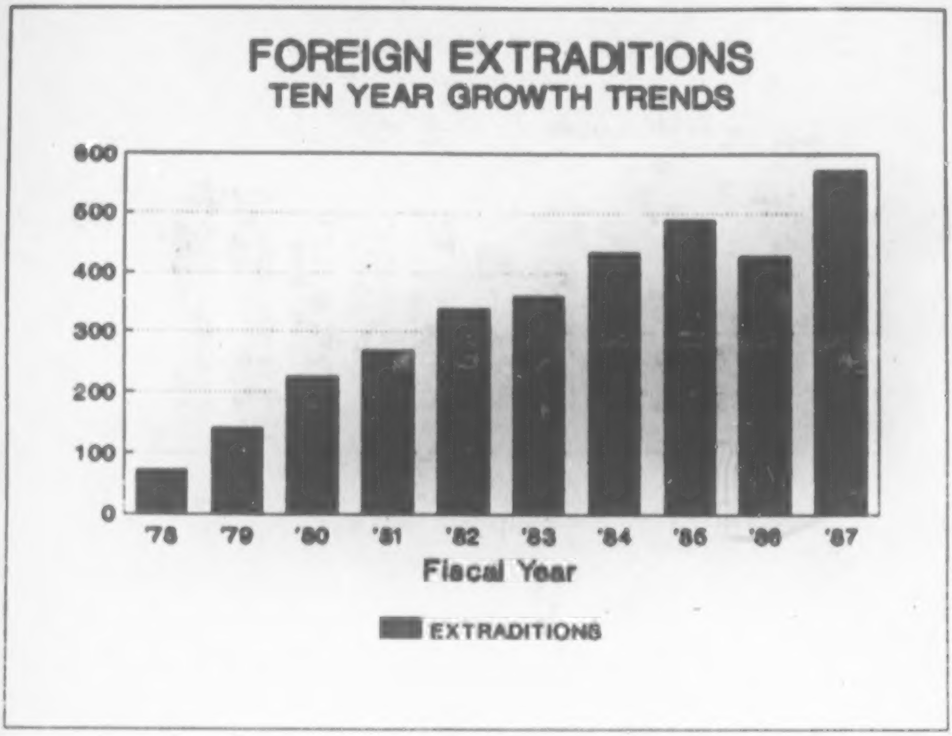
[The graphs follow:]



TAX CASES BROUGHT
TEN YEAR GROWTH TRENDS
1978 - 1987

FISCAL YEAR	CASES *
1978	10,137
1979	10,275
1980	10,417
1981	11,757
1982	13,118
1983	14,129
1984	14,269
1985	13,664
1986	15,331
1987	14,977
Percent Increase 1978 - 1987	47.7%

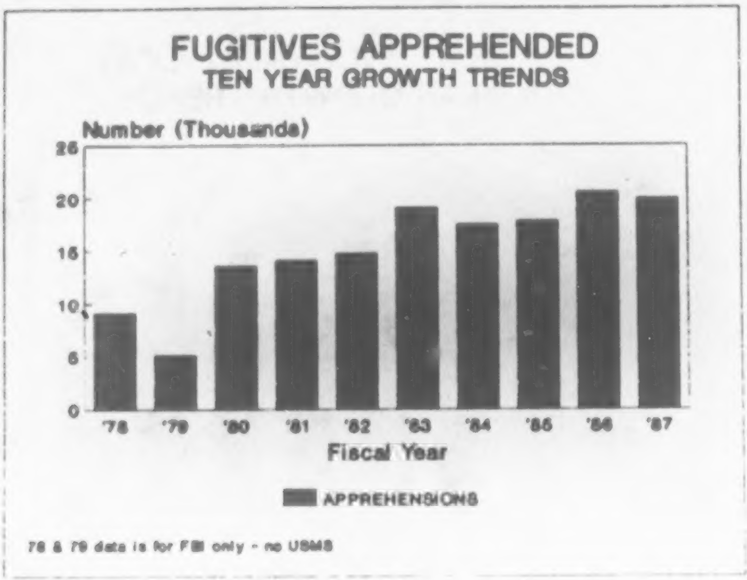
* Criminal and Civil case receipts only, Appellate cases are excluded.



FOREIGN EXTRADITIONS
TEN YEAR GROWTH TRENDS
1978 - 1987 *

FISCAL YEAR	EXTRADITIONS
1978	72
1979	140
1980	224
1981	268
1982	338
1983	360
1984	435
1985	489
1986	429
1987	572
Percent Increase 1979 - 1987	308.6%

*Data obtained from the President's budget. 1978 data represent actual extradictions from the United States and from foreign countries. All other data represent cases received by the United States government or transmitted to foreign countries.

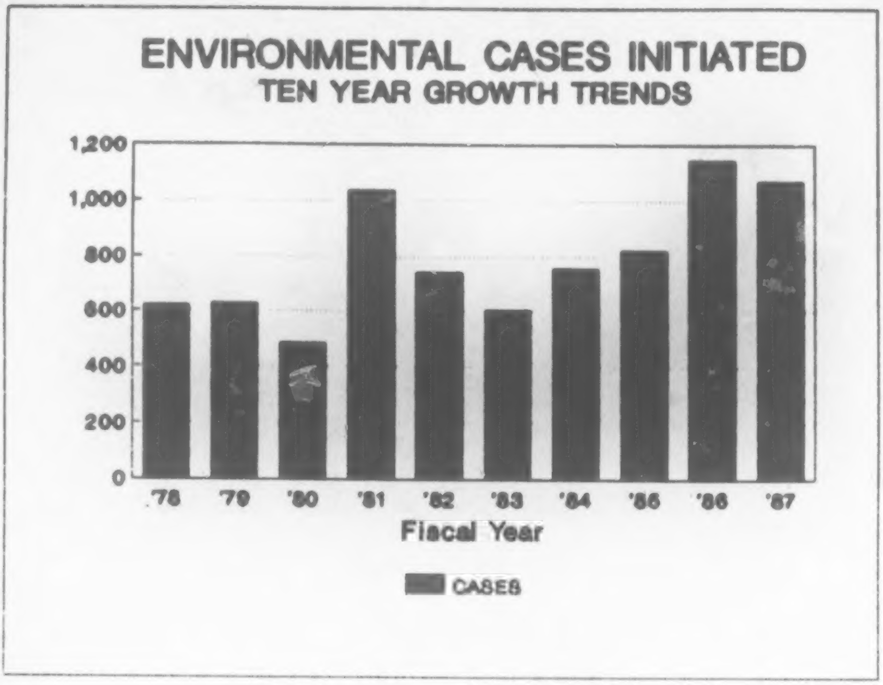


78 & 79 data is for FBI only - no USMS

FUGITIVES APPREHENDED 1/
TEN YEAR GROWTH TRENDS
1978 - 1987

FISCAL YEAR	APPREHENSIONS
1978	9,093
1979	5,082
1980	13,535
1981	14,089
1982	14,673
1983	19,015
1984	17,414
1985	17,747
1986	20,469
1987	19,901
Percent Increase 1978 - 1987	118.9%

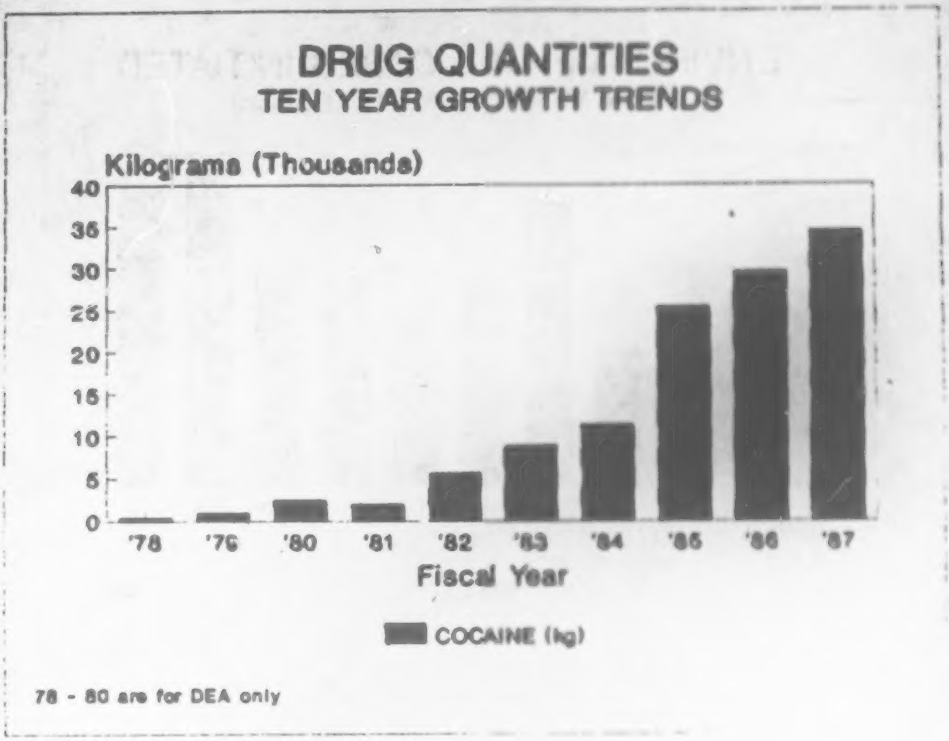
1/ Data for the Federal Bureau of Investigation obtained from the Bureau. Data for the U.S. Marshals obtained from the Budget Appendices. Prior to October 1, 1979, the U.S: Marshals had no responsibility for fugitive arrests. Therefore, data in 1978 and 1979 reflect only the Federal Bureau of Investigation numbers.



ENVIRONMENTAL CASES INITIATED
TEN YEAR GROWTH TRENDS
1978 - 1987

FISCAL YEAR	CASES *
1978	619
1979	627
1980	481
1981	1,035
1982	741
1983	605
1984	758
1985	823
1986	1,143
1987	1,070
Percent Increase 1978 - 1987	72.9%

* Cases/Matters received, Environmental Protection Program.



DRUG QUANTITIES

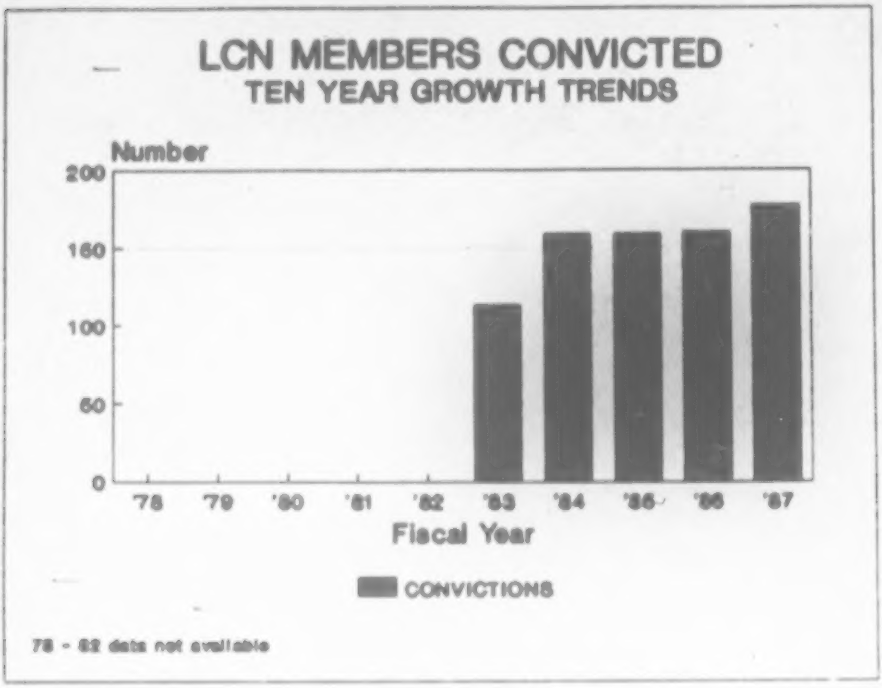
TEN YEAR GROWTH TRENDS

78 - 80 are for DEA only

DRUG QUANTITIES
TEN YEAR GROWTH TRENDS
1978 - 1987

FISCAL YEAR	QUANTITIES HEROIN (KG.)	QUANTITIES COCAINE (KG.)	QUANTITIES MARIJUANA (LBS.)	QUANTITIES HASHISH (LBS.)	QUANTITIES DANGEROUS DRUGS (DOSAGE UNITS)
1978	233	338	1,050,506	1,472	1,076,686
1979	318	978	1,619,115	19,763	24,255,277
1980	190	2,438	817,699	2,143	444,304,150
1981	204	1,945	2,543,140	4,708	86,947,655
1982	2,234	5,635	2,385,936	9,692	32,178,550
1983	4,314	8,822	1,993,570	7,187	21,302,247
1984	39,354	11,313	2,886,897	18,876	13,293,783
1985	15,440	25,312	1,949,092	12,031	38,536,292
1986	5,383	29,595	1,708,351	15,993	32,413,793
1987	16,382	34,414	1,654,743	1,336	33,775,684
Percent Increase 1978 - 1987	6925%	10082%	58%	-9%	3037%

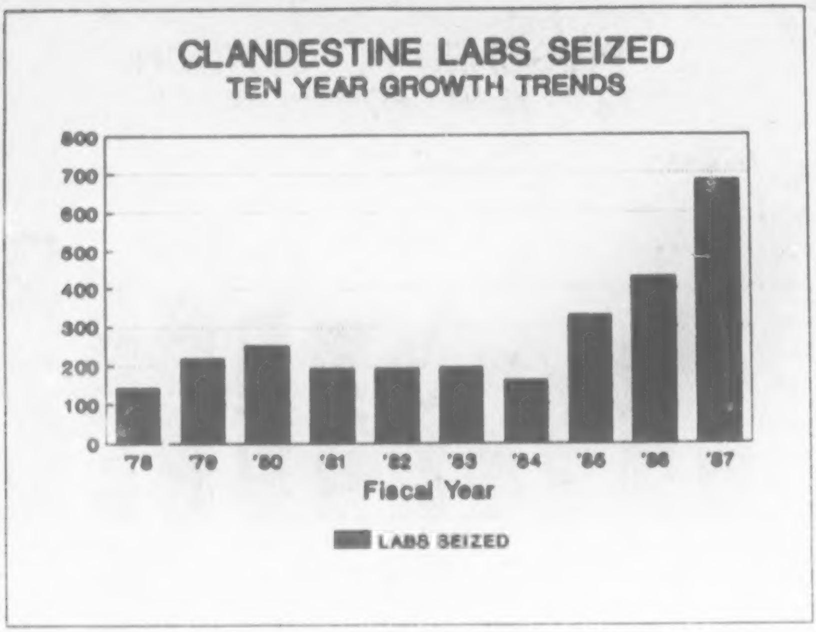
* Data for 1978-1980 are drug seizures by DEA; data for other Department agency seizures were not maintained.



LCN MEMBERS CONVICTED 1/
TEN YEAR GROWTH TRENDS
1978 - 1987

FISCAL YEAR	CONVICTIONS
1978	N/A
1979	N/A
1980	N/A
1981	N/A
1982	N/A
1983	113
1984	159
1985	159
1986	160
1987	177
Percent Increase 1983 - 1987	56.6%

1/ Data obtained from the Federal Bureau of Investigation. Data not available prior to 1983.

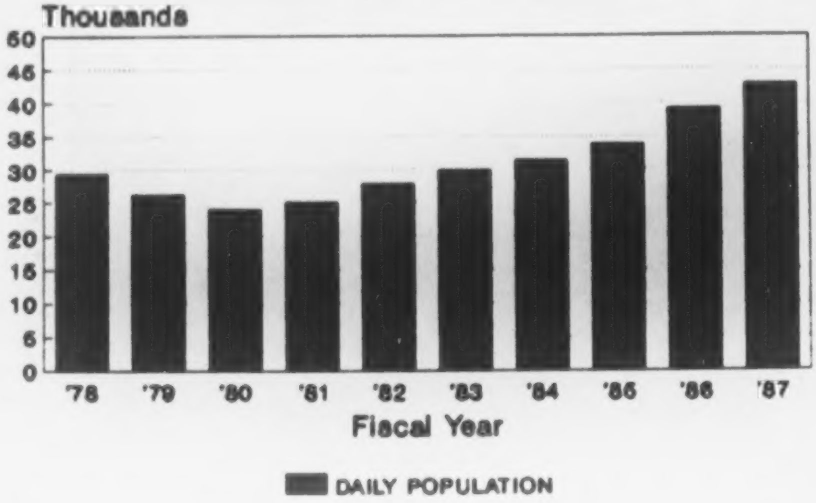


CLANDESTINE LABS SEIZED
TEN YEAR GROWTH TRENDS
1978 - 1987

FISCAL YEAR	LABS SEIZED
1978	142
1979	219
1980	250
1981	192
1982	193
1983	195
1984	162
1985	329
1986	431
1987	682
Percent Increase 1978 - 1987	380.3%

Sources

1978 - 1981: Congressional Authorizations and Budget Submissions
1982 - 1987: Budget Appendixes

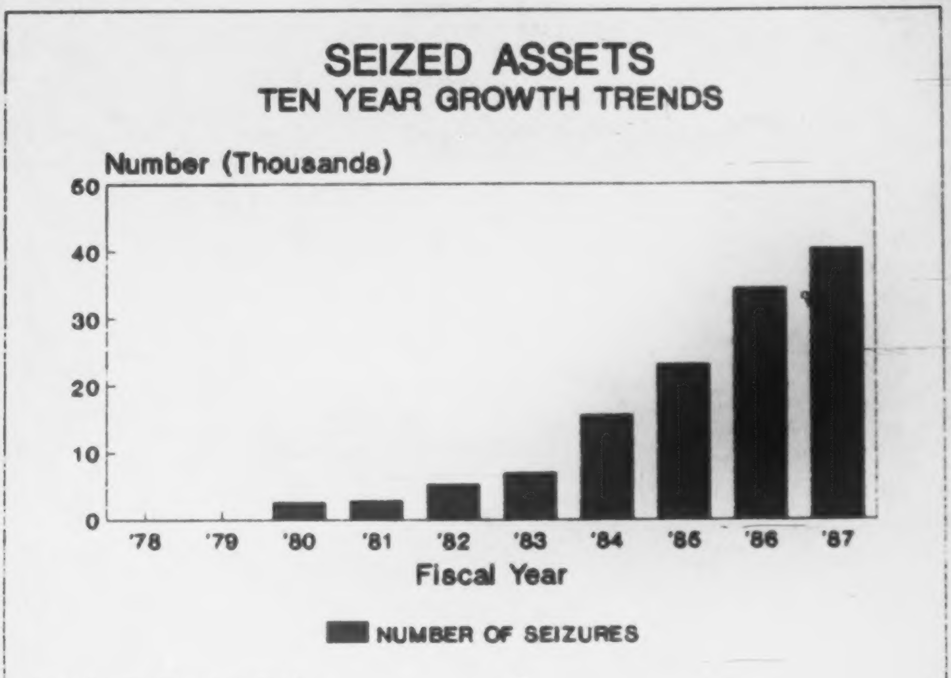


PRISONER POPULATION
TEN YEAR GROWTH TRENDS

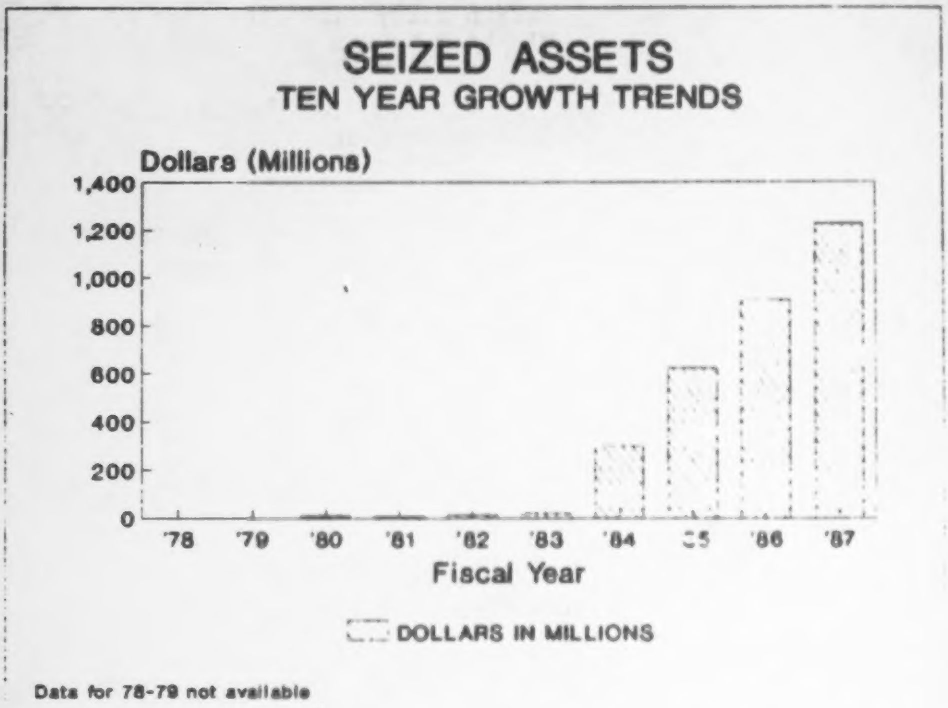
PRISONER POPULATION
TEN YEAR GROWTH TRENDS
1978 - 1987*

FISCAL YEAR	POPULATION		POPULATION
1978	29,347		
1979	26,077		
1980	23,918		23,918
1981	24,932		24,932
1982	27,730		27,730
1983	29,718		29,718
1984	31,394		31,394
1985	33,834		33,834
1986	39,008		39,008
1987	42,627		42,627
Percent Increase 1978 - 1987	45.3%	Percent Increase 1980 - 1987	78.2%

*Data provided by the Federal Prison System.



Data for 78-79 not available



SEIZED ASSETS
TEN YEAR GROWTH TRENDS

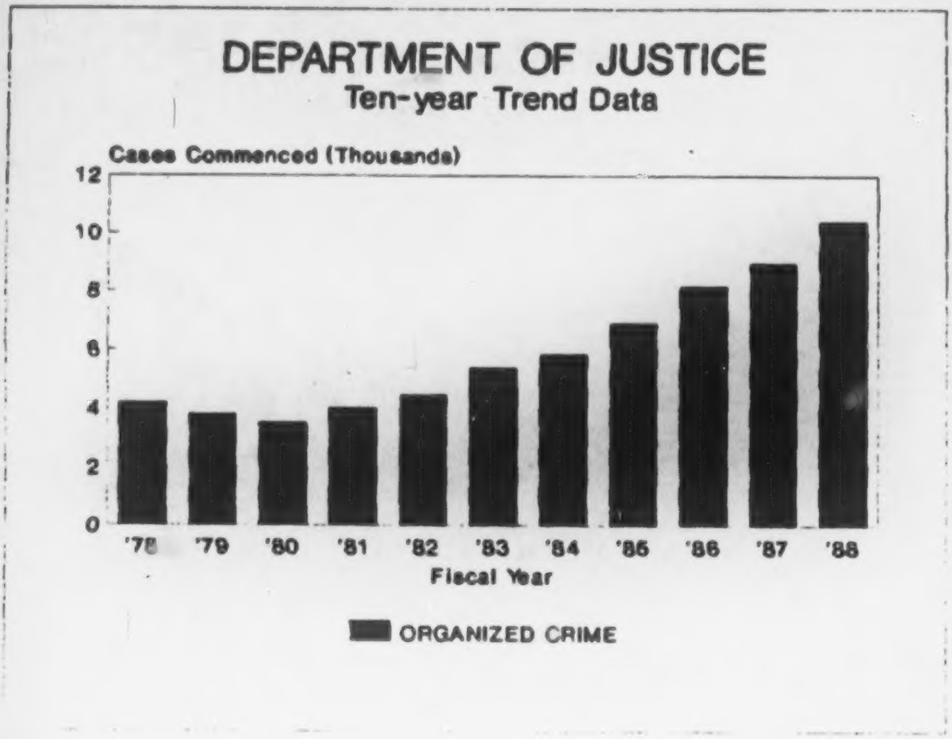
Data for 78-79 not available

SEIZED ASSETS AND CASH
TEN YEAR GROWTH TRENDS
1978 - 1987

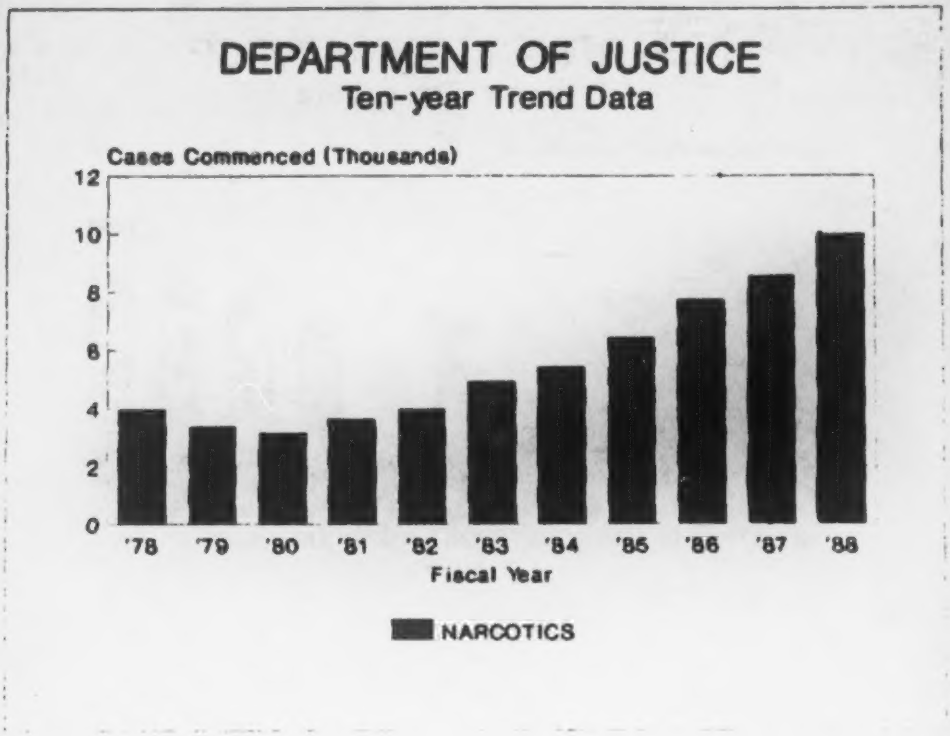
FISCAL YEAR	NUMBER OF SEIZURES	DOLLARS IN MILLIONS
1978	N/A	N/A
1979	N/A	N/A
1980	2,569	11
1981	2,831	7
1982	5,164	14
1983	6,925	21
1984	15,521	299
1985	23,011	625
1986	34,407	907
1987	40,191	1,227
Percent Increase 1980 - 1987	1464.5%	11054.5%

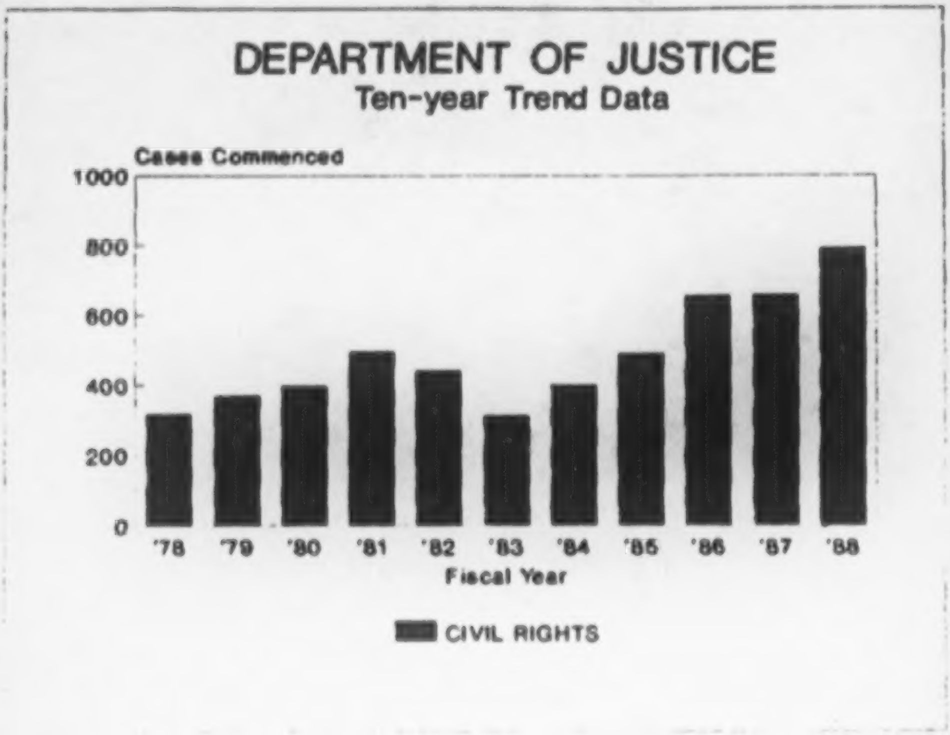
* Only INS data is reflected from 1980-1983.

** From 1978-1983 the FBI and DEA did not have an established Forfeiture and Seizure Program. Therefore, data have not been provided.



DEPARTMENT OF JUSTICE
Ten-year Trend Data


DEPARTMENT OF JUSTICE
Ten-year Trend Data
Cases Commenced (Thousands)
12
10
8
6
4
2
0
'78
'79
'80
'81
'82
'83
'84
'85
'86
'87
'88
Fiscal Year
NARCOTICS

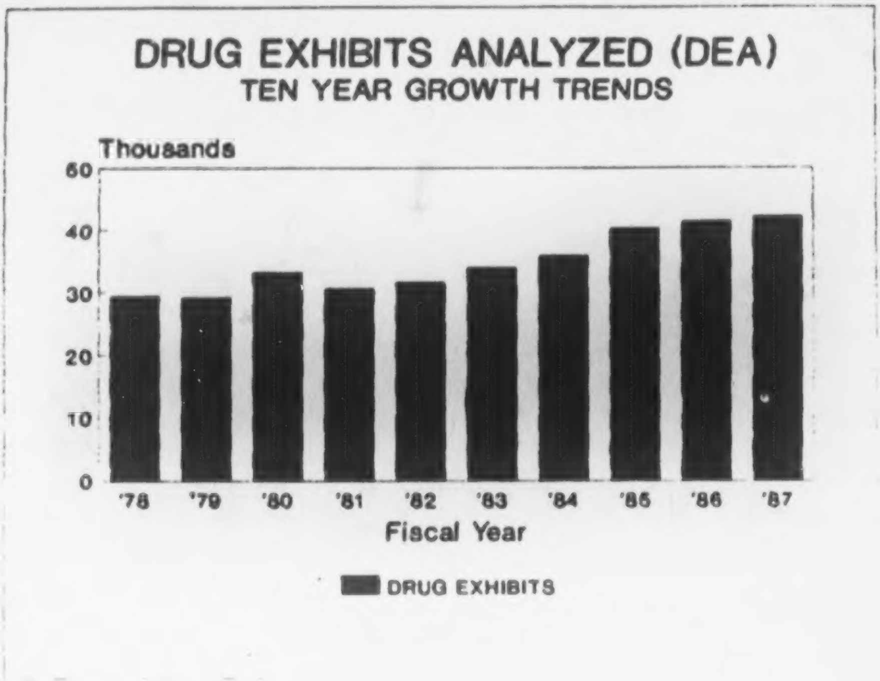

DEPARTMENT OF JUSTICE
Ten-year Trend Data
Cases Commenced
1000
800
600
400
200
0
'78
'79
'80
'81
'82
'83
'84
'85
'86
'87
'88
Fiscal Year
CIVIL RIGHTS

DEPARTMENT OF JUSTICE
Ten-year Trend Data
White-collar crime, Organized Crime and Civil Rights Litigation

06/30/88

ITEM	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
Cases Commenced:											
White-collar Crime:											
Embezzlement........	1,852	1,805	1,505	1,745	1,987	2,111	1,842	2,030	1,837	2,302	2,121
Fraud................	4,615	5,135	4,597	4,603	4,683	5,598	5,505	6,145	6,354	6,960	7,486
Forgery & Counterf..	3,864	3,183	2,301	1,876	1,953	2,317	2,053	2,032	2,371	2,160	1,898
Bribery.............	2	156	114	183	144	165	160	185	168	199	1,194
Subtotal.........	10,333	10,279	8,517	8,407	8,767	10,191	9,560	10,392	10,730	11,621	12,699
Organized Crime:											
Narcotics...........	3,932	3,346	3,129	3,612	3,951	4,887	5,372	6,396	7,727	8,524	9,979
Racketeering........	211	367	328	348	468	466	445	490	419	410	405
Gambling............	11	56	28	47	29	36	42	28	34	60	42
Subtotal.........	4,154	3,769	3,485	4,007	4,448	5,389	5,859	6,914	8,180	8,994	10,426
Civil Rights:											
Criminal cases......	78	80	85	71	62	77	106	90	93	93	98
Civil cases:											
Voting............	11	13	8	8	4	1	7	20	10	11	14
Employment........	161	208	248	339	292	169	234	295	431	432	548
Accomodations.....	24	32	10	5	4	8	5	19	11	15	15
Welfare...........	0	0	0	0	1	1	2	0	1	3	0
Other.............	42	35	46	71	78	56	45	63	109	103	116
Subtotal.........	316	368	397	494	441	312	399	487	655	657	791
Total............	14,803	14,416	12,399	12,908	13,656	15,892	15,818	17,793	19,565	21,272	23,916

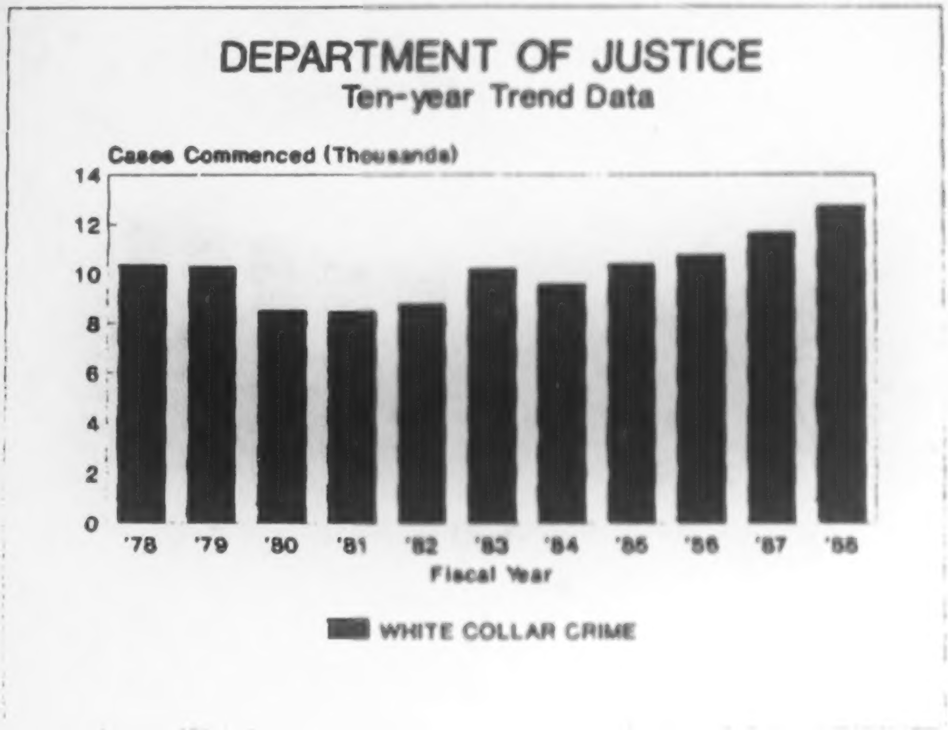
NOTE: Data derived from reports published by the Administrative Office of the U.S. Courts for the twelve month period ending March 31 each year. Civil rights matters in civil litigation include only cases in which the U.S. Government is the plaintiff.

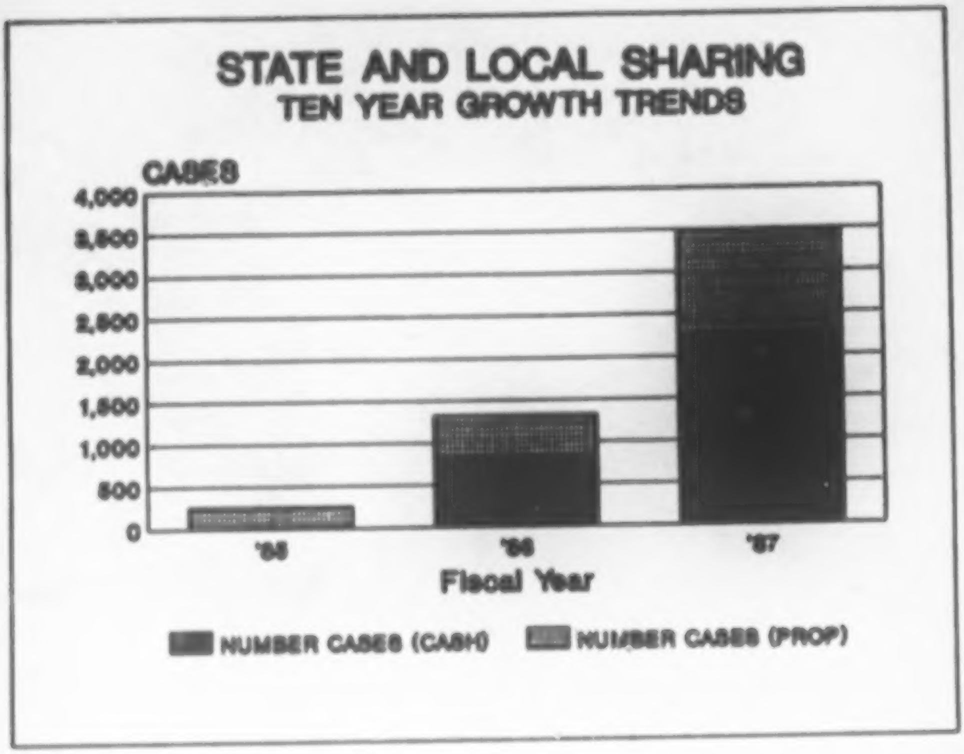


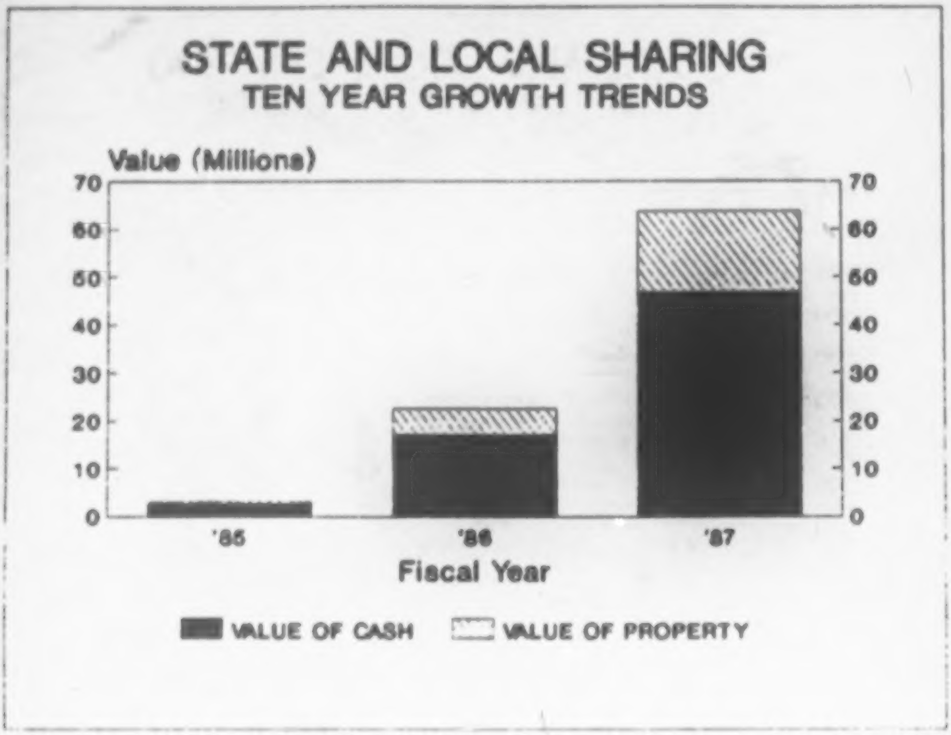
DRUG EXHIBITS ANALYZED (DEA)
TEN YEAR GROWTH TRENDS
1978 - 1987

FISCAL YEAR	DRUG EXHIBITS
1978	29,405
1979	29,166
1980	33,161
1981	30,587
1982	31,596
1983	33,877
1984	35,877
1985	40,268
1986	41,303
1987	42,112
Percent Increase 1978 - 1987	43.2%

Information provided by the Drug Enforcement Administration.


DEPARTMENT OF JUSTICE
Ten-year Trend Data
Cases Commenced (Thousands)
14
12
10
8
6
4
2
0
'78
'79
'80
'81
'82
'83
'84
'85
'86
'87
'88
Fiscal Year
WHITE COLLAR CRIME


STATE AND LOCAL SHARING
TEN YEAR GROWTH TRENDS
CASES
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
'85
'86
'87
Fiscal Year
NUMBER CASES (CASH)
NUMBER CASES (PROP)


STATE AND LOCAL SHARING
TEN YEAR GROWTH TRENDS
Value (Millions)
0
10
20
30
40
50
60
70
'85
'86
'87
Fiscal Year
VALUE OF CASH
VALUE OF PROPERTY

STATE AND LOCAL SHARING /1
TEN YEAR GROWTH TRENDS
1978 - 1987
(Dollars in millions)

FISCAL YEAR	VALUE OF SHARINGS			NUMBER OF CASES /2		
	CASH	PROPERTY	TOTAL	CASH	PROPERTY	TOTAL
1978	N/A	N/A	N/A	N/A	N/A	N/A
1979	N/A	N/A	N/A	N/A	N/A	N/A
1980	N/A	N/A	N/A	N/A	N/A	N/A
1981	N/A	N/A	N/A	N/A	N/A	N/A
1982	N/A	N/A	N/A	N/A	N/A	N/A
1983	N/A	N/A	N/A	N/A	N/A	N/A
1984	N/A	N/A	N/A	N/A	N/A	N/A
1985	2.6	0.4	3.0	24	233	257
1986	17.1	5.4	22.5	841	486	1,327
1987	46.8	16.8	63.6	2,260	1,224	3,484
Percent Increase 1985 - 1987	1700.0%	4100.0%	2020.0%	9316.7%	425.3%	1255.6%

/1 Since Assets Forfeiture Fund was established in 1985, there was no equitable sharing prior to that time. (Cash values provided by Budget Submissions; property values and case numbers supplied by the U.S. Marshals Service.)

/2 These data involve cases of sharing. Some seizures may involve more than one case.

Mr. **Burns.** It is also a record of which we too are proud.

Senator **Hatch.** Well, you have to do it.

Mr. **Burns.** Of which we were a part.

But the one thing we can't do, we are old-timers, we're not kids, and one thing we know is that the world is not painted in black and white. And there is no way that one can drawn down a shade on the erosion of public confidence in what was going on in the Department of Justice. And it is a mistake to try to do so. In other words, give credit where credit is due, if credit is justly entitled, and it is, but for Heaven's sake, let's not paint with——

Senator **Hatch.** No, I'm not trying to say, Mr. Burns, that there were not people who were dissatisfied with any of the prior Attorney Generals, including Mr. Meese.

My gosh, you have got a multi-thousand person outfit down there. There are going to be criticisms. And I don't doubt that some people were demoralized.

But I think the record is a good record. It's better than anybody else's. And that is what is not said.

And I am kind of taking time here, not necessarily though, just to stand up for Mr. Meese, but to stand up for the Justice Department as a whole.

And I think you have to conclude that even though these people were put in these positions, perhaps not all of them by Mr. Meese, that they are all professionals, they are all honest people, they are all hard-working people, and they have all people successful. And a lot of it has been because they have had the leadership at the top to make sure that they have had success. Albeit part of it coming from you, part of it coming from Mr. Weld.

Let's turn to Mr. Weld for a second.

Mr. **Burns.** I want to add just one thing.

Senator **Hatch.** I only have 1 minute left.

Mr. **Burns.** This would have been very enlightening had we had some word from the heart and soul of the Department of Justice, namely the trial lawyers.

Senator **Hatch.** Well, that's fine. But I think you can't rebut the facts, Mr. Burns. That's my point.

My point is that this is a doggone good record. And I suppose if we are going to malign Mr. Meese, we ought also to give credit to Mr. Meese. And that's all I'm trying to say.

Now let me also say that one of the problems that people in public life have happens to be their friends. When I look at Mr. Wallach, I have to say that he wasn't much of a friend. And I think your point is well taken, and I think yours is well taken, and I don't like it.

I know Ed Meese as well as anybody here, and I'll tell you one thing, I don't think there's a dishonest bone in his body. But sometimes you're done in by your friends.

And everything that has been criticized here, almost to a point, comes because Mr. Wallach was wandering around acting like he could do things that he really couldn't do and that Meese really wouldn't do.

So that's one of the things that I think has to be stated in fairness too. My time is up. I have to get to you later, Bill, but I'll try.

Senator **Kennedy**. Mr. Burns, on this specifically, in response to the staff on the questions on the workings of the Department, you mentioned specifically three examples of decisions that were delayed: a dispute between the FBI and the Marshals Service was not resolved; the proposed reorganization of organized crime strike forces wasn't resolved; and the Department's legislative response to the Supreme Court's *McNally* decision, which narrowed the use of Federal wire fraud law in government corruption cases, was not formulated.

Were those, in terms of the delays of the Department, do you still stand by those as examples?

Mr. **Burns**. Well, there were many——

Senator **Kennedy**. I just want to include in the record what was already made available to us. At this point in the record there are three specific ones.

Mr. **Burns**. There are many other instances, and I will not mention them.

However, again, in fairness, they've got to be taken in an overall picture. There is no doubt that there were many, many items that got stalled of the problems that we had.

Senator **Kennedy**. The Senator from Vermont.

Senator **Leahy**. Thank you, Mr. Chairman.

Now, Mr. Burns, you testified that by November of 1987 you had already recognized your need to resign. And I believe as I understand your testimony and what you told the staff, that it was because of this relentless wave of news reports and perceptions that were growing up that made it impossible for the Justice Department to do its job; is that correct?

Mr. **Burns**. I wouldn't put in on news reports. It was the effect of all of this on the workings and morale of the Department of Justice as I saw it from my vantage point.

Senator **Leahy**. As helpful as the Senator from Utah has been with the charts and graphs, that probably was not the perception that the average American had, is that correct? They perceived that the Department was in disarray.

Mr. **Burns**. That was my perception of their perception.

Senator **Leahy**. But there was certainly no secret that concerns were being expressed throughout the country at that time. I mean, everybody knew it.

Everyone of us could pick up the paper, or just talk to people as we all do within the government here. We knew about these pressures, and we knew that pressures were mounting.

Anybody in the government, whether in Congress or the executive branch, had to know about that. Did anybody from the White House call you?

Or let me just be very specific. Howard Baker was Chief of Staff then. Did he ever call you up and say, Arnie, are things really as bad as people are saying?

Mr. **Burns**. Well, to answer your question, I just want you to know, you understand that in my testimony I did not talk about Mr. Meese's guilt or innocence.

Senator **Leahy**. I understand.

Mr. **Burns**. You noticed that. I was very much aware of the evidence, in addition to news reports and everything else, that Bill Weld has catalogued and outlined.

The answer to your question is no. But somewhere around the beginning of the year, in 1988, I felt that it was absolutely essential that I share my concerns with our chief executive.

And I initiated a conversation with Mr. Culvahouse. I can't pinpoint it in time.

Senator **Leahy**. You think it was in 1988, though?

Mr. **Burns**. Oh, it was in 1988, I think. I may have talked to him in 1987; I just can't be sure.

Senator **Leahy**. It was in November of 1987, just to keep this in context, that you decided to resign?

Mr. **Burns**. Right. Actually, I was on a trip, and I was thinking about it, and I had some reflective time, and it was a very painful kind of experience.

But it was early in the year that I met with Mr. Culvahouse, for whom I have the greatest respect, and with Bill Weld.

And we met a number of times at 7:00 o'clock in the morning to share our concerns about this. I wanted to be sure that the White House knew of my concerns.

Senator **Leahy**. So that Mr. Culvahouse was certainly aware of them.

At that point did any of the President's old friends or top advisers, say Jim Baker who used to be there at the White House, did you get any calls from him saying, are things really bad?

Mr. **Burns**. No, sir.

Senator **Leahy**. Did the Vice President call you?

Mr. **Burns**. No. I had occasion to speak with him later, but no, not at that time.

Senator **Leahy**. Did the President call?

Mr. **Burns**. No.

Senator **Leahy**. I just want to make this clear, because one of the reasons for this hearing is to make sure we don't face this situation in the future.

Nobody knows today who's going to be in the administration, who's going to be the Attorney General next year. So in some ways, we can give probably a more candid answer, and more candid questions, today, because of that.

So I might just ask you this: In retrospect, would it have been more helpful if one of the people I talked about had reached out, picked up the phone, said, Arnie, let's talk about this, what's really going on?

Would that have helped you?

Mr. **Burns**. I think so. But I did have an ear, and I did have counsel, and I did have access to Mr. Culvahouse, and later, through Senator Baker.

Senator **Leahy**. Do you think you should have gone right to the President?

Mr. **Burns**. Should I have?

Senator **Leahy**. Could you have?

Mr. **Burns**. I suppose had I asked for a meeting with the President, I would have gotten it. I didn't. I did not ask for it. And you must understand how these things unfold. You creep up on a problem. And it was an evolutionary thing.

Senator **Leahy**. Thinking back on it now and seeing how it evolved, do you think you might have or should have called to speak directly to the President about it?

Mr. **Burns**. I really haven't thought about; I don't know.

Senator **Leahy**. Fair enough.

Mr. Weld, as I understand it, and correct me if I'm wrong in this understanding, you indicated you would have presented the evidence on Mr. Meese to a grand jury to see whether they would have returned an indictment.

As a former prosecutor, you view the grand jury as a way to get the impartial temperature of a jury. But you candidly stated that not every prosecutor would have taken this case to a grand jury. And of course a grand jury might decline to return an indictment.

But do you think what a prosecutor might have done or what a jury might have done really makes any difference in answering the question of whether Mr. Meese himself should have stayed on as Attorney General?

Mr. **Weld**. No, I don't think whether this case is over the rail for criminal purposes is a key question from the point of view of whether Meese should have stayed on in office, no.

Senator **Leahy**. Is it enough to say that he's qualified to be in office because he wasn't indicted?

Mr. **Weld**. No, that's not a formulation I would embrace, Senator.

Senator **Leahy**. Fact is, don't you really have a much different and much higher standard for somebody to be Attorney General?

Mr. **Weld**. Well, I think so. As I said, I tend to agree with Senator Simon. I think the Attorney General's job is a little different.

Senator **Leahy**. Let me just go over part of this to make sure we all understand. Mr. McKay declined to seek an indictment because he said an ordinary defendant probably would not have been indicted under these facts. And he based that conclusion on the standard prosecution policies of the Department, as I understand his statement.

You reach the opposite conclusion on the same facts, applying the same standard. You conclude that if the same evidence were obtained in the case of a lower ranking government official, that case would have gone to the grand jury, and therefore, Mr. Meese's should have, too.

Now, is this just a difference of opinion between prosecutors?

Mr. **Weld**. I think, Senator, that the portion of Mr. McKay's report where he was saying an ordinary citizen would not have been prosecuted was referring to the personal tax item; and I might say that I agree with Mr. McKay on that. I think he did just right on that issue.

I think on the gratuity charge, he said there is insufficient evidence, and if I were asked to explain how prosecutors could reach a different conclusion here, I think Mr. McKay pointed out in a couple of instances in his report that there was no direct evidence of Mr. Meese's state of mind.

But you seldom have, as you know as a former prosecutor, you seldom have direct evidence of the state of mind of an individual.

You have to ask a jury to draw inferences from certain objective facts.

And perhaps I'm more willing than others to ask a petit jury to draw inferences. That's part of the meaning of being an aggressive prosecutor.

So I think that probably accounts for the difference in view.

Senator **Leahy**. And you would have been certainly willing to have asked the grand jury that question?

Mr. **Weld**. Yes. I don't think you should ask the grand jury unless you think the admissible evidence is probably going to be enough to convict and to sustain the conviction.

So I always would do kind of a mental dry run in my head before going to the grand jury.

Senator **Leahy**. You think beyond the grand jury to the petit jury?

Mr. **Weld**. That's right, Senator.

Senator **Leahy**. Let me ask Mr. Burns and Mr. Weld the same question. Put yourself—and I realize it's a difficult thing—but put yourself in Mr. Meese's shoes in deciding whether to resign.

The President of the United States has entrusted you with the responsibility of running the entire Justice Department. He certainly hasn't indicated any displeasure with your performance, in fact, has made public statements saying that in effect he's pleased with your performance.

You're the subject of an independent counsel's investigation. You believe that you're innocent. Would you resign under those circumstances?

Mr. **Burns**. Mr. Meese had an alternative besides resignation, and that was to have stepped aside pending the resolution of the investigation.

And that was an alternative that were I he, I would have seriously considered.

Senator **Leahy**. What about you, sir?

Mr. **Weld**. In May of 1987 I would have at least thought carefully about the leave of absence route.

Senator **Leahy**. We can use charts and graphs to talk about what the Department of Justice does. Is not much of what the Department of Justice is able to accomplish, they're able to accomplish because of the credibility given that this is the U.S. Department of Justice?

When you go to settle cases, bring cases, determine outcomes, isn't much of that done because of the credibility of the Department?

And the settlement of a case, or the direction of litigation, is improved if the credibility is good, and it's certainly hampered if the credibility is not.

Is that not a fact?

Mr. **Burns**. In my view, yes, sir.

Senator **Leahy**. Thank you. Thank you, Mr. Chairman.

Senator **Kennedy**. The Senator from Iowa.

Senator **Grassley**. Thank you, Mr. Chairman.

Mr. Weld, based on what I read in the papers about Mr. Wallach, I can't help but draw the same conclusions you have about what he's attempted to do through friendship.

But while it's one thing to raise that issue, it's an entirely different thing to raise the question about his touting his access around town. Access is the name of the game.

And I'd even suggest that if you look at the Legal Times of July 25th, you'll find even your own law firm, Hale & Dorr, being touted in that same way. If Michael Dukakis is elected president, your firm is going to benefit a great deal by that access, according to that report.

Now I don't say that's right. But perception is what people want to know. And access is touted by law firms all the time.

I mean, we've got a tremendous revolving door problem with lawyers going from government to law firms and then using those contacts, just as there's a revolving door in the Defense Department from the Defense Department to the defense industry.

It's almost as bad within the legal profession where those who leave the Justice Department then use those contacts to represent the same Defense industry that they were trying to prosecute.

A Mr. Gross in your firm says "it's exciting to be associated with a new administration." There's all sorts of inferences in this article about how that connection will benefit your firm, even though nothing illegal would be done, and I don't mean to imply that anything illegal would be done.

But maybe Mr. Meese thought the same thing would apply to the people he knew in private practice, when he came here.

So there's something about the system that's as much at fault as certain individuals within the system. I just want to make that point prior to some questioning. But I think it's a very important point that we better remember about the environment in this town, and the normal process of people wanting to advertise who their friends and connections are.

Mr. Weld, I want to ask some questions about your face-to-face meeting with the President and the Vice President in April about the Attorney General. And you did have such a face-to-face meeting, right?

Mr. **Weld**. That's right, Senator.

Senator **Grassley**. How long did the meeting last?

Mr. **Weld**. Forty minutes, Senator.

Senator **Grassley**. Who else was present other than you and the President and the Vice President?

Mr. **Weld**. Mr. Burns was there and led off, and Senator Baker and Mr. Culvahouse were both present.

Senator **Grassley**. Would you characterize the meeting as a frank and candid discussion?

Mr. **Weld**. Mr. Burns and I were both very frank and candid, Senator, yes.

Senator **Grassley**. Did you sense anyone holding anything back in the discussion?

Mr. **Weld**. No, I did not, Senator.

Senator **Grassley**. Do you think that the parties involved, particularly the President, intended that the meeting be a private meeting?

Mr. **Weld**. I don't know, Senator.

Senator **Grassley**. You don't know what the President's expectations would have been out of that meeting?

Mr. WELD. I didn't talk to anybody about the meeting, if that's what you mean. But no one said anything to me one way or the other about, this is hush-hush or this is not hush-hush.

Senator GRASSLEY. Well, it was a small group, right?

Mr. WELD. Yes.

Senator GRASSLEY. There wasn't anybody from the press present?

Mr. WELD. There was at the very beginning a photographer. But I think she was internal White House.

Senator GRASSLEY. Reports of that meeting were all over the news wires on April 22. Did you have any part in leaking the substance of those conversations with the President?

Mr. WELD. No, Senator.

Senator GRASSLEY. Did you do anything to prevent the leaking of any information to the press?

Mr. WELD. I did nothing.

Senator GRASSLEY. Particularly the conversations with the President.

Mr. WELD. Anything to prevent it? I didn't speak with the press.

Senator GRASSLEY. No, I'm sorry, sir, I didn't say the press. There were leaks to the press, though, of what went on in that meeting.

And you did say that you didn't have anything to do with the leaking of that information; that's what you told me, right?

Mr. WELD. Yes, my recollection, Senator, is that there was a fairly detailed account in the Washington Post the next day with everything but the fact of the meeting.

And then the day after, the fact of the meeting was put on as icing.

Senator GRASSLEY. Well, I guess I'd like to know, did you do anything to see that there weren't any leaks as a result of that meeting?

Mr. WELD. No, no.

Senator GRASSLEY. Do you have any qualms about any of your subsequent statements either in the press or here today with respect to violating any confidences to the superiors that were represented by the leaks that came out of that?

Mr. WELD. Well, this was a point raised by staff in our preparatory sessions, Senator. You know, what's become of executive privilege when you and Mr. Burns come in and talk about your most private conversations with the Attorney General.

It's somewhat troubling. This is a situation where the horse is out of the barn. The topic being discussed is one of public interest, and I think a legitimate topic of inquiry.

I guess my conclusion is, if somebody wants to assert executive privilege, fine. But I wouldn't take the lead on that.

Senator GRASSLEY. Well, we aren't talking about anybody exerting any of that authority. We're talking about people just having conversation with the press afterwards.

Do you have any concern that making private meetings with the President public as you have will have any adverse effect on your successors to high office? Do you think it will have any chilling effect on private discussions if one side has reason to fear that what's said in those private meetings with the President is made public?

Mr. **Weld**. Well, if there's a duly constituted committee of either house, Senator, that wants to hear about a conversation between two government officials, the way I understand the game, that testimony is given unless the White House asserts executive privilege, if it's relevant to the committee's inquiry.

Senator **Grassley**. But you aren't talking at that point in April about the Congress asking for information. You're talking about what was said immediately to——

Mr. **Weld**. That wasn't me, Senator, speaking to the press about the meeting.

Senator **Grassley**. Yes.

Mr. **Weld**. It t'waren't me. That's Vermont for, it wasn't me.

Senator **Leahy**. If the Senator from Iowa would like a running, simultaneous translation, I'll help on these Vermont colloquialisms.

Senator **Grassley**. I understand.

Have you given any thought to that aspect, whether or not you ought to give this information out to the public, before you agreed to testify before this committee, executive privilege or not?

Mr. **Weld**. No, I don't believe I did, Senator.

Senator **Grassley**. So you have a clear conscience about both your statements and action of being here today as well as anything you'd said previously?

Mr. **Weld**. Right.

Senator **Grassley**. Before coming here. The public reports of your meeting with the President said that you laid out the facts of a hypothetical indictment of the Attorney General; is that correct?

Mr. **Weld**. I wouldn't put it quite that way, Senator. As I say, I used the same envelope I've got here and used today with the committee.

Senator **Grassley**. I'm just saying, that's what the press reported.

Mr. **Weld**. Yes, I read that.

Senator **Grassley**. So then you disagree with the press report that you did lay out a hypothetical indictment?

Mr. **Weld**. I didn't say, okay, here's the indictment, Mr. President. I said, as I said today, here's the facts. I think it's afoul of Executive Order 11222, and I think it's over the line of the gratuity statute.

If that's outlining an indictment, sure.

Senator **Grassley**. It was further reported, or maybe I should say leaked, that your legal analysis revolved around the September, 1985 memo to Meese from Mr. Wallach in connection with the Iraqi pipeline, and second, $150,000 legal fee paid by one of the partners in the oil pipeline to Wallach which ended up in a stock trading account for Mr. Chinn. That's correct?

Mr. **Weld**. No, the Iraqi pipeline September, 1985 memos had very little or nothing to do with my conclusion, Senator.

The $150,000, yes, I did mention that to the President. That's on my envelope.

Senator **Grassley**. Okay, but now what about the fact, at least in the second instance—I'll accept your judgment on the first instance that that was reported wrong. You're aware that Mr. McKay and his battalion of lawyers spent 8 months on this aspect of the investigation and turned up nothing.

Do you know something that Mr. McKay doesn't?

Mr. **Weld**. On the Iraqi pipeline.

Senator **Grassley**. That was one aspect in regard to the $150,000 legal fee that you spoke about, that you took a very strong position on.

Mr. **Weld**. Yes, but as part of a gratuity theory, not because of the Iraqi pipeline.

Senator **Grassley**. Well, but on that point, the $150,000, Mr. McKay turned up nothing on that.

Mr. **Weld**. Well, that's one of the facts in the gratuity section of his report. And as I said earlier, he concluded, insufficient evidence of Mr. Meese's state of mind.

And as I say earlier, I might be more willing to ask that inferences be drawn, or legal conclusions be based, on objective facts.

So I think that accounts for the difference.

Senator **Grassley**. But on that point, you don't know something that Mr. McKay didn't know?

Mr. **Weld**. No, no, absolutely not.

Senator **Kennedy**. The Senator's time has expired.

The Senator from Ohio.

Senator **Metzenbaum**. Mr. Burns, Mr. Weld, I had to come up on the Floor and I had to leave, so I missed some of your testimony. And if the question has already been answered, I wouldn't mind you saying to me, we've gone into that already, and I'll just go on to another question.

As I understand it, you indicated in the meeting with the President your concerns about the Department, Mr. Meese. How strongly did you make clear that there had been ethical violations as well as possible criminal conduct?

Mr. **Weld**. Explicitly, Senator. I laid out the facts. And then I said, I think this is over the line of two provisions of Executive Order 11222, namely, preferential treatment and use of public office for private gain.

And in my opinion, it's over the line on the gratuity statute. Bear in mind, I'm on the aggressive side. Reasonable prosecutors could go the other way. And in fact, Mr. McKay has indicated he's going to go the other way.

Senator **Metzenbaum**. Who else was present at the meeting?

Mr. **Weld**. Senator Baker, Mr. Culvahouse, the President, Vice President, Mr. Burns, and myself, Senator.

Senator **Metzenbaum**. Did the President ask you any questions?

Mr. **Weld**. He did not, Senator.

Senator **Metzenbaum**. Did anyone else present ask any questions?

Mr. **Weld**. The Vice President asked Mr. Burns, is there malaise in the Department? How's the morale? One question.

And another question: Are other resignations in prospect?

Senator **Metzenbaum**. Did the Vice President or anyone else express the view that Attorney General is engaged in ethical violations and we have a big problem on our hands. Did anyone express serious concern?

Did you feel it was a supportive meeting? Or did you feel that you were off the track?

Mr. **Weld**. It was a fairly grim meeting.

Senator **Metzenbaum**. And did anyone say anything more? Did the Vice President indicate his thoughts concerning what had transpired, if you remember?

Mr. **Weld**. I think he conveyed by some form of words to Mr. Burns as we were walking out, you know, sorry we have to meet like this or it has to be like this. But I wasn't really a party to that colloquy.

Mr. **Burns**. Senator Metzenbaum, may I intervene for a moment?

Senator **Metzenbaum**. Sure, please do.

Mr. **Burns**. I just want to say, number one, the meeting with the President and the Vice President was at their request. They initiated the meeting.

They were both extremely attentive. The things that were said were very frank and very candid in the extreme.

When I left, I commented that the President wanted to hear the facts, and that we had shared them with him, without pulling any punches.

The President seemed, to my eye and to my mind, distressed by what he had heard. The Vice President, to my mind, to my eye, was florid, and very upset.

Senator **Metzenbaum**. You indicated that expressions were very frank and very candid in the extreme.

Could you spell out what some of those expressions were and who said them, if you remember?

Mr. **Burns**. I think that without going into word for word, I would say that nothing that has been said here today by me or by Mr. Weld was left unsaid; and somehow, in the intimacy of a smaller meeting, it's a lot easier to be very candid, and I would say that the talk that we had was man-to-man, no nonsense, down to earth, very communicative.

Senator **Metzenbaum**. Let me ask you lawyers, frankly, I think the average American has a hard time understanding how a person like Robert Wallach can make over a million dollars by selling his access to the Attorney General of the United States, getting the Attorney General to do one favor after another for him.

The independent counsel states, quote, the circumstances provide some evidence to support a conclusion that Mr. Meese accepted things of value from Mr. Wallach when he should have been sensitive to the possibility that part of Mr. Wallach's motivation may have been to show appreciation for Mr. Meese's official activities that benefited Mr. Wallach.

Frankly, I think that's somewhat of an understatement.

At what point does this kind of conduct, helpfulness to a friend, become a criminal act?

Mr. **Burns**. In terms of the ethical violation, the Executive Order 11222, which was promulgated on May 8, 1965, gives us the answer.

It says that Federal employees must avoid any action which might result in or create the appearance of, one, using public office for private gain; two, giving preferential treatment to any organization or person; three, impeding government efficiency or economy; four, losing complete independence or impartiality of action; five, making a government decision outside official channels; or six, affecting adversely the confidence of the public and the integrity of the government.

Now, we lawyers familiar with Canon Nine know what the appearance of impropriety is all about. There's a lot of law on the subject.

I sat on the ethics committee of my bar associations, State and city, for years. There's lots of law on the subject.

It becomes criminal, if we turn the clock back on our legal education, when there's a corrupt intent, when there's a mens rea. That's my answer to your question.

Senator **Metzenbaum**. Let me ask you this. You were a friend of Mr. Meese's. You had a good working relationship. You were number one on the team.

Mr. Meese is not a stupid man. Nobody ever claimed that. How do you explain Mr. Meese's willingness to hire Mr. Wallach when Wallach was the subject of a criminal investigation? It doesn't follow; it's illogical; it doesn't make sense.

How do you explain his doing that?

Mr. **Burns**. I can't explain it, Senator, except to say, again, Mr. Meese is a very smart man, and I worked very closely with him. We're not here to rewrite history. We were a good team. I liked him very much.

We had a shorthand way of communicating. My mind is boggled by your question. I don't know the answer.

And I think that in this regard, there was a mental block that Mr. Wallach crept up on him. Mr. Wallach, in my judgment, hornswaggled him. I don't know whether that's a Montana expression or a Vermont expression.

Senator **Metzenbaum**. One last question of Mr. Weld.

You have spent a good many years of your life on the criminal aspect of the Department of Justice, both as I understand it as a U.S. attorney, and now at this point.

Based upon what you have learned from the McKay report and the other facts that you are aware of concerning this matter that you learned officially, do you feel that there was a sufficient basis to submit the matter to a grand jury for indictment?

Mr. **Weld**. Yes, Senator.

Senator **Metzenbaum**. Thank you. I have no further questions.

Senator **Kennedy**. The Senator from Pennsylvania.

Senator **Specter**. Thank you, Mr. Chairman.

Mr. Weld, I'm just a little puzzled by your conclusions here. You have gone through a recitation of excoriating facts. You confronted your boss, the Attorney General, eyeball to eyeball, and said, if it were up to you, you'd indict him.

You have a 40-minute meeting with the President, the Vice President of the United States. And then you can say that you'd understand that a reasonable prosecutor might differ from your conclusions. How can all that be?

Mr. **Weld**. Well, I think the crux of the issue on the gratuity statute is the part of Mr. McKay's report that Senator Metzenbaum referred to.

I had a paper clip on that page, as a matter of fact. The issue for criminal purposes is whether Mr. Meese believe that Mr. Wallach was motivated in part by appreciation for Mr. Meese's many official actions.

As Mr. McKay says, and as I agree on the law, if you believe that's the case, or if you believe a reasonable jury can infer that beyond a reasonable doubt, then a gratuities violation has occurred.

Now, they're very close friends. So I can see how a reasonable prosecutor could say, well, no, Mr. Meese couldn't have thought that Mr. Wallach was motivated even in part by the many things that Mr. Meese did for Mr. Wallach.

Senator SPECTER. But by the time you get through with the recitation of facts——

Mr. WELD. Well, that's why I come out where I do, Senator.

Senator SPECTER. And you feel strongly enough about it to confront your boss and say you'd prosecute him if you had the power, and you report it to the President.

I'm just a little concerned about where the American people see this case ending. You have an experienced prosecutor, the Assistant Attorney General in the criminal division, reciting facts which are overpowering as you articulate them.

You come to your conclusion. You're aggressive but you're not crazy. You have independent counsel conducting a long, expensive investigation, concluding that there are four separate offenses where there is probably cause to indict; likely a jury will convict. And there is no prosecution.

I've had some experience in the field, and I'm puzzled. What are we all to think about this after the strength of your testimony; and you say that a reasonable prosecutor can come to a different conclusion in the face of the strong, very strong position you've taken?

Mr. WELD. Well, it's kind of a mess, Senator. I can understand why Mr. Meese isn't too happy about not having a forum in which to test everything under cross-examination publicly.

I've expressed my opinion—there was a point raised by a staff member for Senator Humphrey, am I setting myself up to second guess the independent counsel.

That's not really my purpose at all. I'm sharing the historical record of what went on in March and April of 1988, and a large part of my thinking was that this course of conduct was over the line of this executive order, and even—you know, I'm not sure, as I said to Mr. Meese, it's pretty close to the line on 201, and I'm not sure that I don't think it's over the line.

Senator SPECTER. Well, it just doesn't seem consistent to me. As strongly as you've felt about it, and the way you've evidenced it, and your resignation, your confrontation with the Attorney General and your report to the President to say that another prosecutor might come to a different conclusion.

Mr. WELD. Well, let me tell you this, Senator. I spoke to seven people about this. Four said yes, three said no, at least not without immunizing some of the other people.

Senator SPECTER. Well, how about that? Mr. Burns suggests that the case is still open; that there may be additional evidence.

How do you run an investigation and a prosecution where you have independent counsel investigating Mr. Meese, and you have other prosecutors investigating other individuals, with the other prosecutors having the authority to immunize? And if Mr. McKay had the whole case, he might grant immunity to some of those other individuals, and then have a case——

Mr. **Weld**. Oh, no, Mr. McKay had that full authority. If he'd wanted to, he could have instructed Mr. Guiliani, butt out, I'm going to immunize these folks?

Senator **Specter**. He could have taken that course?

Mr. **Weld**. Oh, yes, under Section 597 of the statute, he takes what he wants, as long as it relates to a matter within his jurisdiction.

And the U.S. attorneys and main Justice are both bound under the law to accord to him the slice of turf and jurisdiction that he wants.

Senator **Specter**. Well, I've read that section. I'm not so sure about it. Did Mr. McKay make any effort to get that immunity to try to get other evidence?

Mr. **Weld**. As I mentioned earlier, I don't know what discussion he had with Mr. Guiliani on that specific point. I do know that beginning in April of 1987 there was an awful lot of close coordination between Mr. McKay and Mr. Guiliani and the public integrity section in the criminal division.

Senator **Specter**. Mr. Burns, in your testimony you said that some evidence is not yet available, that people may yet testify after the prosecutions are concluded.

Do you think there is a realistic likelihood that a case could be brought against Mr. Meese if other evidence is forthcoming?

Mr. **Burns**. I don't know, Senator.

Senator **Specter**. A possibility?

Mr. **Burns**. It's a possibility. I stumble over the reasonable likelihood. It's just too early to know that.

But what I meant to say is that there is a possibility that this is not over.

Senator **Specter**. Mr. Weld, one of the concerns that I had was that there were some two months after your resignation before there was an acting Attorney General who would handle the very complex investigations in the Department of Defense procurement case, and those matters were in the hands of a U.S. attorney for Virginia, complicated matters, require a lot of supervision, a lot of oversight.

I had written to the Attorney General, asked him about this issue, raised the question as to whether there was sufficient oversight at that time. I received in return what I thought was an unsatisfactory answer.

My question is, during the hiatus and the time for a new Acting Assistant Attorney General to become familiar with the matter, do you believe there was adequate supervision for that investigation?

Mr. **Weld**. Senator, I don't know what happened after I left. It was my number one case while I was there. I had a number of meetings out with Mr. Hudson in Alexandria. Went to the FBI.

Senator **Specter**. Spent a lot of time on it?

Mr. **Weld**. Heard the presentations. I was gripped by that case.

Senator **Specter**. To what extent was your subordinate, Mr. Keeney, involved in that investigation?

Mr. **Weld**. Not that much, Senator, except as acting head. He's the senior deputy. But the fraud section, which was the one that had a couple of attorneys on the case, did not report through him.

I appointed a senior attorney from the front office to go out and monitor it, be my personal liaison, as well as a couple of attorneys from the fraud section.

So we had three people from the criminal division on the case.

Senator **Specter**. Mr. Weld, in your testimony, you said that you had the FBI reports on Mr. Meese and that you were sitting on them, that they had come across from independent counsel.

We've been told that there was a barrier as to what the FBI was doing and to whom they were reporting; that the matter was not coming to the Department of Justice but remained with independent counsel.

Did you have access to all those?

Mr. **Weld**. The FBI reports that I had were out of Mr. Giuliani's office and out of headquarters, and they were in support of the New York Wedtech investigation which was then veering off in the direction of the Chinn-Wallach-Meese relationship.

Senator **Specter**. Well, I understood you to testify that you had the FBI reports that had been ordered by independent counsel; is that not so?

Mr. **Weld**. I think the 302 of the interview with Mr. Meese, that interview was conducted by one FBI agent from the independent counsel's office, and one from Mr. Giuliani's office. I certainly had that 302.

Senator **Specter**. Well, what about other FBI reports that were done for independent counsel?

Mr. **Weld**. No, I didn't have full access to what the independent counsel had as he went along. No, by no means. Just if they needed something from the criminal division, they would come to me, say, could we have this.

I was referring to——

Senator **Specter**. But you had some, as to the questioning of Mr. Meese——

Mr. **Weld**. I had the April 17, 1987——

Senator **Specter**. Let me finish my question. You had some as to Mr. Meese at the request of independent counsel.

I'm concerned, Mr. Weld, about the separation. We've questioned Judge Sessions and Judge Webster on this issue, to be sure that what independent counsel has, that it's not available in the Department of Justice and could get to the subject of the investigation.

And my question really goes to whether or not that iron curtain is maintained.

Mr. **Weld**. Oh, I can tell you that what I had didn't go from me to the subject of the investigation. That's why Mr. Burns——

Senator **Specter**. That's not my question. My question is whether it went to the Department of Justice at a time that the Attorney General was under investigation?

Mr. **Weld**. Well, the reason for the continuing dialogue between myself and the independent counsel's office is that the criminal division continued to refer matters over. The Baby Bell matter, for example, came straight out of the criminal division.

On the pipeline matter, they needed expert testimony, expert assistance, from career attorneys in the criminal division, to give them assistance on the Foreign Corrupt Practices Act.

One arrangement I set up with both Judge Walsh and Mr. McKay was, when they wanted a criminal division attorney to work for them, I said, okay, you go work for them but don't report back to me, because I'm a political appointee.

So the Office of International Affairs worked with Judge Walsh; the fraud section and the internal security section worked with Mr. McKay, reporting to him. And they did not report back to me.

Now I think I understand your question. And the answer is no, I didn't have that independent counsel internal work product. If they needed something from me, they'd come to me.

Senator SPECTER. My time is up. I'd just like to ask the question, if you might respond in writing.

For fiscal year 1986, there was a direction by the appropriations committee to establish a special task force on drugs for the City of Philadelphia with extra agents from DEA, FBI and BATF with a report to be submitted by the Department of Justice. I'd be interested if each of you gentlemen will respond as to whatever happened to that. As best I can tell, it was never carried out.

Thank you very much, Mr. Chairman.

Senator KENNEDY. The Senator from Illinois.

Senator SIMON. Thank you, Mr. Chairman.

I want to commend the two of you again. It took courage and it was a great service to the country.

I would like to insert, Mr. Chairman, into the record an article by Mr. Weld that appeared in the Washington Post on April 24th, "Say No to Corruption," which, among other things, says that the problem of corruption is not simply with the executive branch, it is also with Congress.

But you do not touch on one thing—and this whole hearing is really about corruption—you do not touch on one thing that we have not faced up to on this side of the witness table, and that is the whole system by which we finance campaigns. It is part and parcel of the whole system of corruption.

[The article follows:]

WASH POST April 24, 1988

Say No to Corruption

The High Cost of Winking at Sleaze in Government

By William F. Weld

WHEN IT comes to corruption in public office, the United States has an attitude problem. At best, it is not so much apathy as resignation: "What are you going to do? You can't fight city hall." At worst, public attitudes can make it virtually impossible for law enforcement to root out corrupt officials. As one United States Attorney from an "aromatic" district recently complained to me: "Hell, the citizens of this state don't just expect corruption in their local officials; they ***demand*** it."

This is not the time or place for me to discuss the reasons why I recently resigned from my Justice Department post. But before I take up a new position in the private sector, I would like to underscore a concern that increasingly troubled me throughout my years of involvement in law enforcement at both the federal and state level. My concern is that, while we frequently deride other countries for corruption in their public institutions, we greatly underrate public corruption as a political and economic problem right here at home.

The Justice Department is now filing five times as many criminal cases against corrupt public officials nationwide as it did a decade ago; yet strangely, our national indignation seems to be reserved for narcotics-related corruption south of the border. This indifference is costly in many ways.

- *Corruption feeds on itself.* Most people don't realize what a slippery slope public corruption is. In my years as a federal prosecutor from 1981 to 1988, I reviewed hundreds of cases of corrupt officials. They mostly started small.

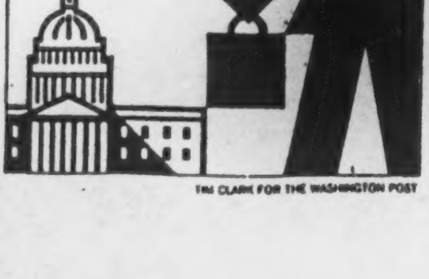
I recall a police officer who had become entirely corrupt, explaining that it had all started with his taking free cups of coffee from a local sub shop in Boston—then free subs, then $10 bills in the wax paper wrapped around the subs, and pretty soon he was on the "pad."

Another example of this snowballing effect occurred in the so-called "River Cops" case in Miami, involving corruption within the narcotics division of the Miami Police Department. One of the lead defendants had been a decorated patrolman. He started to keep the relatively small amounts of petty cash he happened to find in drug dealers' cars. Soon he was keeping larger and larger discoveries, including at one point 5,000 pounds of marijuana. Finally, he graduated to robbing boats and houses, and eventually made millions selling vast quantities of cocaine to dealers.

A former police commissioner of the city of Boston, describing corruption on his force, once said, "There are grass-eaters and there are meat-eaters. The grass-eaters will take a reasonable amount. The meat-eaters will rip into everything they can get." My experience is that, at least in the world of public corruption, grass-eaters evolve into meat-eaters.

- *Corruption has many victims.* Part of the job facing law enforcement is to persuade people to become intolerant of corruption—even, or perhaps especially, petty corruption

William Weld served as U.S. attorney for Massachusetts from 1981 to 1986 and as assistant attorney general in charge of the Justice Department's criminal division from 1986 until his resignation last March 29.



TIM CLARK FOR THE WASHINGTON POST

See CORRUPTION, D2, Col. 1

Say No to Corruption

CORRUPTION, From D1

tion. Here we have to grapple with a fairly widespread public attitude that minor peccadillos and exchanges of "favors" are only a sunk cost of politics, the "grease that makes government work"—in short, a victimless crime.

The truth is that public corruption offenses affect all Americans directly and personally, particularly those at the lower end of the income scale. Recent cases in Atlanta, Boston and New York demonstrate what you get when inspectors are paid small amounts of money to look the other way: You get substandard electical wiring, inferior building materials and shoddy construction, usually in the poorest areas of town. Recent cases in Chicago and Philadelphia demonstrate what you get when judges and lawyers line their pockets: You get rapacious criminals sprung loose to line the street.

■ *Taxpayers foot the bill.* Corruption also has a geometric impact on the public treasury. Don't think for a minute that the businessman who has to make a payoff or an illegally large "campaign contribution" to win or keep a government contract is going to eat the cost of that bribe. That dollar figure will be plowed back into the cost of his public contract, or a change order to the contract, and passed right on to the taxpayers—with interest.

■ *Good people avoid public service.* Of even greater concern is the long-term impact of corruption on civic life in this country. A perception that the system is corrupt or rigged will, by a political Gresham's Law, eventually drive the good players out of the game. I saw that happen in Massachusetts, when I was engaged in the private practice of law: Many reputable contractors, architects and engineers simply refused to bid on government contracts. Beyond a certain point, if we acquiesce in the notion that politics and public life are a "dirty business," we are going to dissuade honest and able citizens from seeking public office in the first place.

■ *Law enforcement becomes even harder.* From a law-enforcement perspective, any public perception that corruption hurts no one makes it much harder to do the job. If witnesses do not see bribery or extortion as serious crimes, they will not want to come forward, will not see the need to testify, and will not cooperate in investigations. Prosecutors who are reluctant to challenge the power structure and judges who let corrupt officials stay on the street have unwittingly contributed to this problem.

What is necessary, of course, is to arouse the public's interest in these matters; and here, I believe, there is some ground for optimism. Vigorous investigation and prosecution can in fact change the way the public's business gets done.

In Massachusetts, for example, we prosecuted a series of pension fraud cases against several prominent Boston city officials. These officials had claimed phoney "slip-and-fall" accidents, which allowed them to retire from the city with $30,000-a-year disability pensions. The total cost to the taxpayers of Boston would have run into millions of dollars. But after the juries came back with guilty verdicts in these cases, disability pension awards nosedived from 260 in 1981 to only 48 and 44 in 1983 and 1984.

To be sure, vigorous pursuit of public corruption offenses is not always popular. For one thing, the targets are usually articulate individuals with a base of support in the community. For another, public corruption is an area where the investigator and prosecutor must be aggressive. Crimes of corruption are protected by a code of silence: All parties to the offense have an incentive not to come forward. This means that investigators and prosecutors have to resort to electronic surveillance, undercover operations, the compulsion of immunized testimony, reliance on unsympathetic informants and accomplice witnesses, and vigorous use of the grand jury's investigative powers. Such intrusive techniques present delicate problems of privacy and civil liberties of citizens, to which the prudent prosecutor must be constantly attentive.

I, for one, believe that the federal government must take an active role in the fight against public corruption at all levels. Some who oppose this view have conjured up the image of the Feds as Big Brother, running roughshod over state and local jurisdictions in pursuit of matters of essentially local concern. This is, however, emphatically not the view of state and local prosecutors around the country, nearly all of whom favor a strong federal anti-corruption effort.

There are many reasons for the Feds to apply their muscle to corruption problems even at the state and local level. First, federal substantive laws such as the racketeering and wiretap statutes are tougher than most if not all state laws. Also, the procedural laws in most states are less favorable to public corruption cases. In the Miami "River Cops" case, for instance, local prosecutors asked for federal treatment of the matter because they believed state discovery procedures would jeopardize the case.

There are other factors. Many state attorneys general lack statewide criminal jurisdiction. All local district attorneys must respond first to violent crime and conditions in the street, or be voted out of office. None enjoys the support of an investigative establishment combining the Federal Bureau of Investigation with the Internal Revenue Service. Their budgets are tight. Many even have their budgets and salaries set by county commissioners or state legislators who may themselves be part of the corruption problem, not its solution.

But at the same time it helps prosecutors at the state and local levels, the federal government must not forget that reform, like charity, begins at home. The same lessons apply at the federal level as at the local level: Public attitudes are the key, and corruption is a weed that will grow fast if left unattended.

These matters need legislative attention at the federal level. One good start would be a federal anti-corruption statute to overcome the effects of last year's *McNally* decision in the Supreme Court, which limited the ability of federal prosecutors to charge local officers with abuses of public trust.

Another welcome step would be to apply all existing anti-corruption statutes to members of Congress. Surprisingly, only members of the executive branch and the independent agencies are prohibited from supplementing their salaries with fees and honoraria for job-related activities. The result is that it is considered acceptable practice on the Hill for members of Congress to pocket "honoraria" of up to $2,000 in return for simply showing up at a breakfast, luncheon or tour of corporate premises.

There are two problems with this situation. First, there is the double standard involved. If anyone in the Justice Department or any other executive agency did this, he or she would be immediately clapped in irons. Juvenal had it about right: "Many commit the same crime with different results. One bears a cross for his crime, the other a crown."

The second problem is that those who receive payments may begin to expect them. When a group of congressmen in 1986 made a trip to view a company's facilities and received their $2,000 "honoraria," it was said in defense of the arrangement that "Members of Congress, taking time to do something like this, expect to get some compensation for it." But "compensation" is the very word used in the criminal statute (18 U.S.C. § 209) prohibiting such conduct by members of the executive branch.

The vice of smiling on "gratuities" was well stated by the 5th Circuit Court of Appeals in a 1978 case: "Even if corruption is not intended by either the donor or donee, there is still a tendency in such a situation to provide conscious or unconscious preferential treatment of the donor by the donee, or the inefficient management of public affairs."

There is nothing new about this. Daniel Webster insisted that his "retainer" be "refreshed" before he would agree to stand again for the Senate, there to continue to represent the mercantile interests of New England. But just because a practice is white with age doesn't mean it's good. Something must be done to curb the potentially corrupting influence of these "fees" and "honoraria" within the legislative branch. I find attractive the idea of raising the salary of all members of Congress to somewhere between $150,000 and $175,000 a year, at the same time prohibiting all honoraria. This would be very, very expensive—and it would be worth every penny.

One big gain would be ruling out the possibility that fees or honoraria would influence a legislator's sense of priorities, let alone his or her vote. Moreover, if members did not have to scramble to support their families and two residences, they would have more time to devote to the public's business. Those higher salaries might also attract to the national legislature at least some able women and men who would not otherwise be able to make the sacrifice. Even a few top people can make an enormous difference to the formulation and efficient execution of public policy. We should cleanse the system so as to attract them

Senator **Simon**. Let me ask this question of both of you. Let us say it is November 9th of this year. Either George Bush or Michael Dukakis comes to you and asks this question: What should I be looking for when I name an Attorney General of the United States. What would you tell them?

Mr. **Burns**. I would say that the first thing one should look for is a man learned in the law. Second, I think it is helpful to have someone who has practiced law, and I think it is helpful to have somebody who has had criminal justice experience.

I think it is helpful to have someone who, by experience, is a decisionmaker. I think it is important to have someone who has high sensitivity, demonstrated either in prior jobs, to the demands of the public trust.

I think it requires somebody who is totally dedicated to the rule of law and to the impartial administration of the law. The statue of justice is blind-folded. I think we need someone who is sensitive to and dedicated to the importance of the improvement of the administration of justice both on the criminal side and on the civil side of the ledger.

I think you ideally would like someone who has had government experience and understands budgets and budgetary considerations. I think you need someone who is a communicator, who can motivate people, who can come here and have a dialogue with the people in this room and the people at the Judiciary Committee of the House.

I think you want somebody who is a fairly dynamic and charismatic leader of men and women, with sufficient stature already demonstrated so that people in the Department will follow that leadership. I think you need somebody who has got broad horizons and whose interests transcend small, narrow, political, petty issues, and someone who has an overall picture.

I could go on and on. I pause simply because I'm getting out of breath.

[Laughter.]

It is an overall picture, but it would be so nice to be able to, in the world of simplistics, say, oh, there are certain moral issues. There must be sensitivity, but there is a whole mosaic that makes up a great Attorney General, and I think that one could profitably look back at some of those who have served with great distinction as a model.

Senator **Simon**. Mr. Weld.

Mr. **Weld**. If I could just make one comment, Senator, I would emphasize the same qualities Mr. Burns did—dedication to the rule of law, strength, independence, professional stature.

The only point I'd like to make is that loyalty, personal loyalty, would be very low on my list. I think there is very little room for personal loyalty in law enforcement.

Senator **Simon**. When you say personal loyalty, you mean personal loyalty to the President?

Mr. **Weld**. Yes; not to say the Attorney General should be out of tune with the President's political philosophy, but personal loyalty, that is right.

Senator **Simon**. You talk about the state of mind being a factor in whether there is an indictment. When the Attorney General appeared on "Nightline" the other night, as you mentioned, he clearly misstated the facts. It is hard for me to believe that he genuinely believes the two of you are responsible for all the difficulties here.

Are these just defensive mechanisms on his part, that he knows their inaccuracy, or what is your guess on the state of mind here?

Mr. **Weld**. This is a town where people get sore, Senator, and, you know, I think the best thing often is if you can just move on.

Senator **Simon**. Mr. Burns.

Mr. **Burns**. I think that I've already anticipated the question in some of my remarks, but I like to hold to the belief that if Mr. Meese were given a shot of sodium pentothal that he still clings to the thought that he committed no crime, he committed no wrong, he committed no act of impropriety, he committed no ethical violation, he committed no error of good taste or bad taste; that he comported himself properly.

If he had it to do over again, he would comport himself in the same way. And this, to me, is explained by what I was talking about earlier about Alice in Wonderland and about the fact that it is somebody else's fault.

Senator **Simon**. I have not read the whole report, but I read the executive summary of the McKay report. It is very difficult to believe the law was not violated, particularly the 201 section you referred to, Mr. Weld.

But you have—in terms of prosecution, you have several people who have taken the fifth amendment who are unwilling to testify. Their reasons for taking the fifth amendment may at some point disappear.

We face a 5-year statute of limitations, if I'm correct, in this field, is that correct, Mr. Weld?

Mr. **Weld**. Yes, Senator.

Senator **Simon**. That statute of limitations can, before too long, present a problem. In your opinion, is the 5-year statute of limitations too short? Should that be changed?

Mr. **Weld**. I think it is about right, Senator. I've been tempted by six, which is the State statute of limitations for a number of offenses, but by and large I think a 5-year statute is okay for Federal criminal offenses.

Of course, if you have concealment, then that tolls the statute, so that gets you out of your worst case scenarios of people getting away with things because of concealing their own crime.

Senator **Simon**. Mr. Burns, do you agree with that assessment?

Mr. **Burns**. Yes, sir.

Senator **Simon**. Thank you, Mr. Chairman, and my thanks to the witnesses.

Senator **Kennedy**. Senator Simpson, the Senator from Iowa—Wyoming.

Senator **Simpson**. Iowa? Excuse me. [Laughter.]

Well, thank you, Mr. Chairman.

I'm a little puzzled. It wouldn't be the first time since I've been on the Judiciary Committee to have that kind of puzzlement, but I must say that in listening particularly to the comment of my great friend from Illinois—and he and I were State legislators together and I know the man and I have the deepest admiration and respect for him, but this hearing is not about corruption.

I really wouldn't want to see it be a hearing on corruption. That is not what it is. This is a hearing on oversight, and there is one hell of a lot of difference. Now, let us, you know, then try to remember that over there in the House there are guys of that other political faith who are wandering around with the jail door about to clank shut on them.

So I don't know why we have to spend too much time on the most vindicated man in America, and that is Ed Meese, at this point, with the hooks and the snares and the nets out for him for so long. It has just been impossible to even comprehend.

It took us 415 days to get him confirmed as Attorney General, and meanwhile over at the other body they are, you know, putting them in jail, with a "D" behind their name. So I really don't think we need to get too exorcised about that here, and I feel strongly about that, obviously.

If we are really after something here, it might be an old-fashioned Meese-bashing. That might be part of it, an exercise, but it is rather well modulated, and I appreciate that, at least, and I mean that. I think it is quite well modulated, but it does show, you know, the dark side of the village here; go out and stir up a few cameras and crank out a few tough pieces and drag the old cat in one more time, pick the bones of the cadaver, and the biggest fish has already slipped the net. So here we go, anyway. I think it is a rather sad exercise.

And as I say, so far, at least in the fight game, they ain't laid a glove on him. Oh, they have dusted him and they have got his lip butchered up and there is blood running and he has got some raspberries and strawberries on his face, but they ain't nailed him yet.

And so Meese was cleared on all counts by the McKay report following his investigation. Yet, this remarkable side show goes right on, and I don't know what more you can do to a human being unless you just want to go down and camp on his front door and mash around on him and Ursula and the rest of the troops. What an exercise.

Personal loyalty—boy, I tell you, I'd like to believe these two witnesses, and I've worked with Arnie; I think he is terrific. He and I had a rich discussion one day about immigration with the powers that be. I'll never forget that one, and he was a great help.

I don't know Mr. Weld that well, but why wouldn't a President bring a loyal person with him to this village? And look at the list of them, and it will never change. This fine man—Senator Kennedy—saw his brother bring his brother. Griffin Bell came for Jimmy Carter. Why not? He is marvelous, so was Bobby Kennedy with his brother.

Herb Brownell; William French Smith, the President's personal attorney; John Mitchell—whatever they did isn't the issue. [Laughter.]

The issue is loyalty. You know, keep giggling, but the issue is loyalty, and if you don't have that at the top of the list you don't have an Attorney General. Some of them pass the test and some of them flunk the test, and that is the way it will be with the next administration and the next President, but the first thing on the top of the list will be loyalty, and not the exercise in pedantics or white papers and all the rest of it.

I guess, you know, you want to get someone learned in the law, someone who practiced law, the public trust, sure. But Democrat and Republican Presidents for lots of years have been picking the first guy out of the pack on the basis of personal loyalty because they never know how they are going to get whipsawed to death by a person in that office.

I can understand really what this is about. It is about frustration, frustration with a big "f." Today's witnesses were repeatedly advised, everyone was repeatedly advised and understood fully that the President and the Vice President would not, and could not, and should not take any position on the investigation until the investigation was concluded and all information was available. Now, that is where we are.

Howard Baker and A.B. Culvahouse advised everybody up and down the line that the President and the Vice President believed it would be unfair to pre-judge the results of McKay's investigation, especially since much of the information available to McKay was unavailable, totally unavailable to the White House due to the grand jury secrecy rules and the investigatory confidentiality. Now, that is pretty frustrating stuff for lawyers, especially curious ones like I was, you were, we are on this committee.

You shared, both of you, the absolute and total frustration of many who believed that a swift and prompt action by McKay to get off his fanny and get it done one way or another, just get the thing out, was a prerequisite to reaching any kind of an informed conclusion as to the investigation of the Attorney General. There is not any question about that. Let us just get that right up on the old top of the table and quit dinking around with the rest of the stuff.

Indeed, I think, and it is my hunch—I'm not the resident shrink here, but it is my hunch that you decided to resign in this total frustration when you probably learned once again for the eighteenth time that McKay's deadline in issuing his report was slipping one more time, and you probably pulled the detonator or pulled the pin right there on that one, and it did slip again; again and again and again it slipped, and everybody wondering what was going to come out, and the resources being poured down that giant rat hole, while waiting for a report.

And then when you were advised or knew that it was going to slip again from the end of March to the end of April and then finally we get the report on July 18th. That is slippage of the first order. And I think had McKay acted more swiftly that you would have been willing to stick around and see what the damage was and what happened. I have that hunch. Maybe that is misreading everything, but that is at least the way I look at part of this.

And you had your visit with the President and the Vice President, and I've heard that reported. It is interesting to hear that the Vice President was an active participant, and as you described him, Arnie, he was florid with anger at what occurred there, and that, I'm sure, will surprise some at this table and other places.

So everybody who participated was concerned about the effect of Ed Meese's difficulties—that was not conjecture; it was real—and the effect upon the Department's morale and its operations, and we have heard some of that.

But everyone here and everybody who is a reasonable person in this matter knew there wasn't a thing you could do until McKay finished his work because of the way it is in real life in the law, and I can understand it and maybe we ought to just list it as frustration and move on and get the other one up and put a new Attorney General in and wait for a new President to select an Attorney General whose first requirement will be loyalty.

I don't have any questions, Mr. Chairman.

Senator KENNEDY. Do you want to make any response, Mr. Burns, Mr. Weld?

Mr. BURNS. No.

Mr. WELD. No.

Senator SIMON. Mr. Chairman, if I could just take 10 seconds to respond to my friend from Wyoming, we want loyalty, but the first loyalty ought to be loyalty to the law and not loyalty to the President. I think that is the question, that is the fundamental.

Thank you, Mr. Chairman.

Senator KENNEDY. The Senator from New Hampshire.

Senator SIMPSON. Mr. Chairman, I think that is true, and knowing the Senator from Illinois, I hear fully what he is saying, but the loyalty to the law comes with the loyalty to the President of the United States, and the loyalty to the law is assured by the confirmation process.

The loyalty to the President is assured by the selection, and the loyalty to the law is assured by the confirmation process as we in this panel, Democrat and Republican, develop that.

Senator KENNEDY. The Senator from New Hampshire.

Senator HUMPHREY. Thank you, Mr. Chairman.

Mr. Weld, you delivered a letter—hand-delivered, or someone on your behalf hand-delivered a letter of July 12th to the chief counsel of this committee and the minority staff director, and I'll ask, Mr. Chairman, that the entire letter be included in the record if it has not been already.

But referring to the third paragraph, Mr. Weld, you state, quote,

> I believe I should register the following point for the committee's consideration in determining whether it wishes to proceed with this particular hearing. Mr. Meese recently announced his intention to return to private life later this month or early August.
>
> While I very much enjoyed by association with Mr. Meese, I am constrained to say also that the reason for my resignation from the Justice Department was related to his tenure as head of that Department. Accordingly, upon his return to private life, the reason for my resignation will no longer obtain. This circumstance may be relevant to the committee's consideration.

And then skipping to the end, you say, "To recapitulate, then, I suggest that some consideration be given to whether Mr. Meese's resignation moots the necessity of this hearing."

Why did you suggest to the committee that consideration be given to the whether Mr. Meese's resignation moots the necessity of this hearing? Is that your view, that it moots the necessity of this hearing?

Mr. WELD. I think it is a question for the committee, Senator. With him announcing that he was going to resign and go back into private life, the question at least arises about whether it is fair to him to pile on.

Senator **Humphrey**. What is your conclusion? We will reach our own conclusion on that question, but what is your conclusion on that question?

Mr. **Weld**. I guess I think that if a majority of the committee is of the view that there is a sufficient legislative purpose to have the hearings go ahead, I'm not prepared to dissent from that. I wanted to flag the issue and make sure that the committee focused on it.

Senator **Humphrey**. You also say in your statement on the same subject, quoting you, "Under these circumstances, as I said in my letter, the question arises whether the necessity for this hearing has not been mooted by events. Since the reason for my resignation concerned only Mr. Meese's tenure as head of the Department and since Mr. Meese has announced he plans to resign in the near future, arguably, considerations of fairness to Mr. Meese suggest that this hearing is no longer necessary."

Well, what about those considerations of Mr. Meese? We've heard a lot of talk about ethics today, due process, fair play. What about it? What is your conclusion? Is it fair to be having this hearing, to be calling you folks as witnesses, or you, just referring to yourself, calling you as a witness? Is it fair to Mr. Meese to call you as a witness at this point?

Mr. **Weld**. Well, you have a trade-off between fairness to Mr. Meese and the danger of appearing to be piling on on the one hand and the committee's legitimate powers of inquiry on the other hand.

Senator **Humphrey**. You have concerns about the fairness issue or you wouldn't have written this.

Mr. **Weld**. That is right.

Senator **Humphrey**. You have concerns about the fairness of this proceeding?

Mr. **Weld**. I think it is an issue, yes.

Senator **Humphrey**. But you are not prepared to come to a conclusion about the issue. Is that what you are saying?

Mr. **Weld**. No, I wasn't prepared to go to Buenos Aires and say you'll never take me, no. [Laughter.]

Senator **Humphrey**. Are you prepared to say whether the hearing under these circumstances which you cited in a number of places is a fair proceeding or not? Is it fair to proceed at this point?

Mr. **Weld**. I think it is a proper proceeding, Senator, given the prerogatives of the Senate.

Senator **Humphrey**. But there is some room for argument, you will admit, and you have admitted it in your testimony.

Mr. **Weld**. Oh, I expected to hear some.

Senator **Humphrey**. Mr. Burns, you resigned on what date was it?

Mr. **Burns**. March 29th, sir.

Senator **Humphrey**. March——

Mr. **Burns**. 1988.

Senator **Humphrey**. March 29th. And, Mr. Weld, you resigned on what date?

Mr. **Weld**. The same day, Senator.

Senator HUMPHREY. And how did you present your resignation to the Attorney General?

Mr. WELD. We went in to see him around eight o'clock, and Mr. Burns stated that we were leaving the Department and we had about a 20-minute, 25-minute discussion of our reasons for leaving. Then the three of us went out to the morning staff meeting and Mr. Meese announced our departures, sir.

Senator HUMPHREY. Rather an odd coincidence that you would both resign on the same date and at the same hour, or is it a coincidence? I mean, how did it happen that you two folks resigned coincidentally?

Mr. WELD. It was not a coincidence at all, Senator. We met a number of times over the previous weeks with each other, with Mr. Culvahouse, with Senator Baker, and it was not a coincidence.

Senator HUMPHREY. Mr. Weld, did you approach Mr. Burns with the idea of resigning or was it vice versa?

Mr. WELD. My memory is that the issue first came up in discussions in December, and I haven't really rehearsed this with Mr. Burns. My memory is that he was more concerned than I at the outset—neither of us is the resigning type—and that I passed him in the outside lane. [Laughter.]

Senator HUMPHREY. So you proposed to Mr. Burns that both of you resign together?

Mr. WELD. I think the first discussion of resignation as a possibility originated with Mr. Burns rather than with me, but that was months before. This was an evolving process.

Senator HUMPHREY. Is that your recollection, Mr. Burns?

Mr. BURNS. I would subscribe to that, Senator. Sometimes these things get a little fuzzy, but I think that is an accurate sense of it.

Senator HUMPHREY. And did you approach other parties with this proposal for a resignation, Mr. Weld?

Mr. WELD. The only other person I discussed this with was 24 hours before our resignations I discussed it by telephone with the Solicitor General——

Senator HUMPHREY. Mr. Freed.

Mr. WELD [continuing]. Who was home with the flu.

Senator HUMPHREY. Who did not resign?

Mr. WELD. That is correct.

Senator HUMPHREY. But two of your aides, I gather, and two of Mr. Burns' aides also resigned?

Mr. WELD. That was a surprise to me. When I came downstairs from having resigned, their resignations were on my desk and it was a total surprise to me.

Senator HUMPHREY. And was that the same circumstance with you, Mr. Burns? Your aides resigned?

Mr. BURNS. No. I had discussions with my aides about resignation and I had discussions with other aides about not resigning, and the net result is that all of them resigned, save one. But I counseled a number of them not to resign on March 29th.

Senator HUMPHREY. Thank you.

Mr. Weld, your decision to resign arose over your concern for the morale at the Department?

Mr. WELD. No, Senator. The morale and malaise factor, I would say, was less important to me than to Mr. Burns. He had a better bird's eye view of the Department. Mine was much more of facts and law and what am I doing here type analysis.

Senator HUMPHREY. But why didn't you just resign instead of trying to find others to resign with you?

Mr. WELD. Well, as I say, I did not have any discussion with anyone except Mr. Freed. I wanted to advise him of what we were going to do.

Senator HUMPHREY. Did you ask him to resign with you?

Mr. WELD. I said the issue was on the table for him. I think "ask" may be too strong a word.

Senator HUMPHREY. You suggested that it was in order?

Mr. WELD. No. I think maybe that is too strong a word, but we did discuss it at some length on the telephone.

Senator HUMPHREY. You at least planted the idea in his mind?

Mr. WELD. Yes, I think that is fair.

Senator HUMPHREY. Okay. Well, why didn't you just plain resign? If you felt that your ethics—that your standards, shall we say—that the Department was not meeting your standards, that you felt you couldn't continue to associate with the Attorney General, why didn't you just resign instead of trying to organize a cabal?

Mr. WELD. Well, as I say, Senator, it was not a coincidence that Mr. Burns and I resigned on the same day. I think we decided to try to steer a middle course between going out blasting the Attorney General on the steps of the Justice Department and going out quietly in the middle of the night so nobody would notice.

Now, maybe we cut the salami too close to one end. Certainly, with the amount of material that appeared very quickly in the newspapers concerning our meetings with senior staff and that sort of thing, you might say it looks like we cut it too close to the end of holding a press conference on the courthouse steps. But my—it was a calibrated decision to try to steer that middle course.

Senator HUMPHREY. It seems to me that your credibility would stand higher today if you had simply resigned without trying to get others to resign with you. You discussed resignation with Mr. Burns, you discussed resignation with Solicitor General Freed.

It sounded to me like you were making a deliberate effort to cut the salami in a way that would make it significantly more embarrassing to the Vice President and the administration than if you had just plain resigned.

Mr. WELD. We certainly had no intention to embarrass the Vice President or the administration.

Senator HUMPHREY. I didn't say the Vice President.

Mr. WELD. I'm sorry.

Senator HUMPHREY. I said the Attorney General and the administration.

Mr. WELD. I'm sorry.

Senator HUMPHREY. You might be—well, I'll drop that one.

Now, when you came into office, the case of Mr. Beggs was still hanging fire in the Criminal Division, wasn't it?

Mr. WELD. That is correct, Senator.

Senator HUMPHREY. And it took you, what, 7 or 8 months to decide that there was no merit to that case before you dropped it?

Mr. WELD. It was up on an interlocutory appeal in the Ninth Circuit on a procedural issue, Senator, so that the merits issue was not squarely presented until April of 1987.

Senator HUMPHREY. And when did you drop the charges?

Mr. WELD. I think June of 1937, Senator.

Senator HUMPHREY. So another 2 or 3 months ensued even after the business you spoke of?

Mr. WELD. Yes.

Senator KENNEDY. The Senator's time has expired. Do you want to finish? Do you have a question?

Senator HUMPHREY. Yes, may I, please, because I think it is instructive?

Senator KENNEDY. Briefly.

Senator HUMPHREY. Now, you will acknowledge, I hope, at this date that the handling of the Beggs case was an injustice, a miscarriage of justice, and an outrage?

Mr. WELD. I haven't—I think "outrage" is too strong a word, Senator. It was an acute embarrassment for the Justice Department.

Senator HUMPHREY. Including you?

Mr. WELD. Oh, if anybody hated to dismiss that case, it was me. I rode into town saying white collar crime is my number one priority. That case was the number one white collar case pending when I hit Washington.

Senator HUMPHREY. Yes.

Mr. WELD. And what is my first significant action in the area, to dismiss that case.

Senator KENNEDY. The——

Senator HUMPHREY. Did you feel that——

Senator KENNEDY. The Senator's time has expired.

Senator HUMPHREY. Oh, I'm sorry.

Senator KENNEDY. I'll be glad to come back.

Senator HUMPHREY. Yes, thank you.

Senator KENNEDY. The Senator from Illinois, do you have further questions?

Senator SIMON. I do not.

Senator KENNEDY. Fine.

The Senator from New Hampshire.

Senator HUMPHREY. You felt acutely—what was your phrase?

Mr. WELD. I felt it was an acute embarrassment for the Justice Department.

Senator HUMPHREY. To drop the case. Well, did you believe there was a case there or not?

Mr. WELD. Well, not when I——

Senator HUMPHREY. You dismissed the case.

Mr. WELD. Not when I dismissed it, no, no.

Senator HUMPHREY. Well, then, why did——

Mr. WELD. It was——

Senator HUMPHREY. In other words, you felt the Department had erred and you were embarrassed at the error?

Mr. WELD. That is right; oh, that is right. I didn't feel the dismissal was the wrong thing to do or I wouldn't have done it.

Senator HUMPHREY. All right, okay. So there was a case which even you will admit was improperly raised at the Department of

Justice and the flames were whipped up and fanned by the press and a man was forced to resign from office, driven out of town by this dynamic, and there was no basis for it; it was a mistake. Is that correct?

Mr. **Weld**. That is correct, Senator.

Senator **Humphrey**. You don't regard that as an outrage? If you were in his shoes, I bet you would, and his family—even more, his family. If you were his brother, I bet you would.

Mr. **Weld**. That is true enough. I'm thinking of the prosecutors that indicted the case, and their conduct has been assailed as outrageous, and that I'm not willing to buy into because there was a basis before them to proceed at the time that they presented the case to the grand jury.

Senator **Humphrey**. All right. Well, here is my point. You folks seem to be implying that whenever charges are raised, people should quit, or at least take a leave of absence. Is that your point?

Mr. **Burns**. No, not at all, Senator; not at all.

Senator **Humphrey**. Well. All right, then, I'll come back to that in a moment, but that appears to me—the Beggs case is a classic case of someone being driven from office, his reputation being impugned, his family life surely turned into a nightmare. I mean, I don't know if you have young children or not, but you can imagine what it must have been like for the family.

And there was no basis for that; it was just an outrage. It was a lynching. And there are some, if not you, who seem to think that every time serious charges are raised against a public official, he ought to quit or he ought to take a leave of absence, and that isn't wise advice at all. Do you agree with that?

Mr. **Weld**. I agree with you. You know, the fact of public criticism is not enough to spark a resignation. If people had been howling about Mr. Meese and everyone had said he should resign because of the Iran-contra thing, I wouldn't have left. It was because of my assessment of the merit of the charges.

Senator **Humphrey**. Now, Mr. Burns, it was you who talked about morale and malaise at the Justice Department. You said, quoting your statement, "I heard stories of employees being embarrassed and ridiculed."

Well, let me say in response to that, big deal. When you are in public policy and public life, no matter how virtuous you may be, if you make decisions and choose one course of action over another, one value over another, as a legislator, as a member of the executive, or even as a member of the judiciary, you are going to be criticized and people are going to ridicule you.

And some of those who are associated with you may be embarrassed by that ridicule. You know that, don't you?

Mr. **Burns**. I agree with you, Senator.

Senator **Humphrey**. Well, so what is the big deal about employees being—and I'll let you answer this in a minute. One employee had to leave a party of friends. Well, big deal. Some of the parties in this town stink, and I can understand why some Department of Justice people might be abused at such parties.

And graffiti—you talk about graffiti, one case, I guess, or maybe that is plural. What is the singular of graffiti?

Mr. **Burns**. I don't know, but we might use spaghetti as a guide. But the point is there are many, many instances of it.

Senator **Humphrey**. Yes, including in the legislative branch. I've seen Senators' names involved in graffiti. Should Senators resign because their names are in between some graffitous words? Is that a word, "graffitous?"

One Justice Department employee was upbraided by a desk clerk. My God, what a humiliation, to be upbraided by a desk clerk. What kind of nonsense is this? If you are involved in controversy, there is going to be controversy about you, and some of your associates will be sometimes embarrassed rightly or wrongly, and sometimes your name will be entwined in graffiti.

What is this nonsense? What is the case that you try to make about malaise and morale at the Justice Department, especially in light of these charts—I wish we had big ones so the TV cameras could see them—in light of these charts that show performance is exemplary?

Let me just repeat for those who came late, and for effect, white collar—the number of cases commenced—you can't see it, but you can see the trends. It starts with 1978; it is a 10-year chart and goes to 1988.

In the Carter years, white collar crime cases commenced declined in the Carter years. During the Meese years and the Reagan years, the number of cases commenced against white collar crime steadily increased, including in 1988. Do you agree with that?

Mr. **Burns**. I'm very proud of the record.

Senator **Humphrey**. Right; I'm glad you are proud of it. Likewise, in the area of organized crime, cases commenced, 10 years, declined during the Carter years; steadily, dramatically increased, including in 1988, during the Reagan-Meese years. Do you agree with that?

Mr. **Burns**. If that is what the chart says, I certainly do, yes.

Senator **Humphrey**. Well, let me just say that these figures are taken from——

Mr. **Burns**. I'm not quarreling with them.

Senator **Humphrey**. Okay, but just for the record let me say that the figures are taken from the report published by the Administrative Office of U.S. Courts for the 12-month period ending March 31 each year. No one would impugn the validity of these statistics, I think, based on that source. Would you agree with that?

Mr. **Burns**. I wasn't following you precisely, but I'm not going to quarrel with you. [Laughter.]

Senator **Humphrey**. I know; I tune out myself a lot of times. They come from the published reports of the Administrative Office of U.S. Courts, Mr. Burns.

And in the area of civil rights cases commenced, again, the general trend has been up, substantially up, in the last 4, 5, 6 years under Mr. Meese, including a substantial jump in 1988. Do you agree with that?

Mr. **Burns**. Yes.

Senator **Humphrey**. So where is the morale problem? Is it just limited to a little graffiti and embarrassment at the hands of desk clerks?

Mr. **Burns**. Well, I think you know the answer to that. I'm going to try to answer you and be very responsive to you.

Senator HUMPHREY. Yes, fine, your turn.

Mr. BURNS. No. I think that, you know, it is effective to pick, you know, point by point. What you have got to do, and I ask you to do this with me, is—you know, there is an old saying, walk in another man's moccasins.

Senator HUMPHREY. I'm prepared.

Mr. BURNS. We walked—and you asked about the coincidence of Weld and Burns resigning on the same day. We lived with this problem for over one calendar year.

Senator HUMPHREY. So what?

Mr. BURNS. This is not an isolated case. This is a mosaic, a crescendo of what appeared to be violations of law and improprieties, and affected the Department's functioning. And as I said earlier——

Senator HUMPHREY. Well, Mr. Burns, you said it——

Senator KENNEDY. The witness will be permitted to respond. You have about two more minutes.

Senator HUMPHREY. But you are contradicting yourself, Mr. Burns.

Mr. BURNS. I find no contradiction.

Senator HUMPHREY. Then tell us how you don't contradict these charts?

Mr. BURNS. I'll be very happy to, Senator Humphrey——

Senator HUMPHREY. Thank you.

Mr. BURNS [continuing]. Because we could have compiled an even better record, there is no doubt.

Senator HUMPHREY. Of course.

Mr. BURNS. And with respect to this great record, of which I'm very proud—I played a very small part in it, but I'm very proud of it—is that we have 65,000 people undergirding the Department of Justice and they contributed mightily to that record.

But you've got to understand that you've got a picture here, a gestalt, of allegations, not bare, spurious allegations, but allegations of impropriety, many of them corroborated by the Attorney General. You know, there was the account; there was a memorandum on the pipeline; there was contact between he and Wallach, and so forth.

So to take this piece by piece and to criticize something, these were examples of an overall picture, and after—it started in March—over one calendar year, I concluded for myself that I was going to resign, and did so.

Senator KENNEDY. I'll give the Senator another—he has had now 20 minutes. I'll give him another minute or so and then we are going to——

Senator HUMPHREY. Thank you.

Senator KENNEDY. I'll take a minute and then we'll recess the hearings.

Senator HUMPHREY. Recess, or is that the end?

Senator KENNEDY. Adjourn the hearing.

Senator HUMPHREY. Well, Mr. Burns, I don't think you answered my question. If morale was so bad, then how come this exemplary performance, of which you say you are proud?

Mr. BURNS. Well, I thought I gave you two answers, and if I didn't——

Senator **Humphrey**. Well, maybe I'm dense. Try me again.

Mr. **Burns**. No, no. I'm sure it is my——

Senator **Humphrey**. You really didn't.

Mr. **Burns**. I'm sure it is my lack of communication and not your density.

Senator **Humphrey**. I doubt it.

Mr. **Burns**. So let me just give you——

Senator **Humphrey**. You said this is exemplary performance and you are proud of it.

Mr. **Burns**. I think it is.

Senator **Humphrey**. But you could have done better?

Mr. **Burns**. That is number one, and number two——

Senator **Humphrey**. Of course. What department couldn't do better? You know, there is always room for improvement, but this is pretty damn good, isn't it?

Mr. **Burns**. I think so.

Senator **Humphrey**. You think it is pretty damn good?

Mr. **Burns**. I do.

Senator **Kennedy**. The record will show it is pretty damn good. [Laughter.]

Senator **Humphrey**. Well, since the Chairman likes the point, let me ask Mr. Weld, Mr. Weld, are you proud of your part in this record?

Mr. **Weld**. Yes, I'm proud to have been associated with the Justice Department for the last 7 years.

Senator **Humphrey**. Is this a pretty damn good record? [Laughter.]

Mr. **Weld**. We could have done better.

Senator **Humphrey**. Yes. Well, you know, nobody is perfect. Pretty damn good?

Mr. **Weld**. Pretty good record.

Senator **Humphrey**. Including 1988?

Mr. **Weld**. I'm not familiar with the statistics, but——

Senator **Humphrey**. Well, do you question the statistics drawn——

Mr. **Weld**. No, no.

Senator **Humphrey** [continuing]. From the report of the—I'm not a lawyer; I always have to read this stuff—the Administrative Office of the U.S. Courts? Is that a pretty good source, assuming there are no mistakes?

Mr. **Weld**. Yes.

Senator **Humphrey**. Yes. Pretty good record, including 1988?

Mr. **Weld**. Yes.

Senator **Humphrey**. Mr. Burns, including 1988?

Mr. **Burns**. I would not quarrel with that.

Senator **Humphrey**. Mr. Chairman, pretty good record?

Senator **Kennedy**. Pretty good record. [Laughter.]

Pretty good record.

Senator **Humphrey**. Well, then, let us stop driving people out of town on the basis of allegations.

Senator **Kennedy**. In conclusion, I think the witnesses' testimony today confirms the appropriateness of this hearing. Equal justice under law is the cornerstone of our constitutional system, and the Department of Justice, headed by the Attorney General, has the profound responsibility of enforcing this fundamental principle without fear or favor.

The testimony of these two very distinguished former senior Justice Departments officials paints a distressing picture. Again and again, Attorney General Meese put private benefit ahead of public trust and, as a result, public confidence in the Department of Justice was undermined; the Department's morale suffered, and so did justice in America.

Attorney General Meese's claim is that the report of the independent counsel vindicates him, and he has now stooped to an irresponsible attack on the messengers who bring the bad news to this committee. Far from exoneration, the report and the testimony of our witnesses today reveal that the Attorney General brought disgrace upon himself and his high office.

I, too, join in commending our witnesses for their integrity and their courage, and I look forward to working with the new Attorney General to restore public trust so that the Department of Justice can once again be worthy of its name.

The committee stands in adjournment.

[Whereupon, at 1:23 p.m., the committee was adjourned.]

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